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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~265.~~ 69

THE HOME INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

THE BALTIMORE WAREHOUSE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Clk

FILED SEPTEMBER 25, 1874.

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Marshall
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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, (being the sixth day of the same month,) in the year of our Lord one thousand eight hundred and seventy-four—present, the honorable William F. Giles, judge Maryland district; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

THE BALTIMORE WAREHOUSE COMPANY
versus
THE HOME INSURANCE COMPANY OF NEW YORK.

Be it remembered that heretofore, to wit, on the first day of November, in the year of our Lord 1873, the superior court of Baltimore City, in the State of Maryland, transmitted to the circuit court here, in pursuance of the statute in such case made, a transcript of record, which is in the words and of the tenor following, to wit:

2 STATE OF MARYLAND,
City of Baltimore, sct.:

At a session of the superior court of Baltimore City, in the eighth judicial circuit of the State of Maryland, begun and held at the court-house in the city of Baltimore, in and for the city aforesaid, on the second Monday of May, (being the twelfth day of the same month,) in the year of our Lord one thousand eight hundred and seventy-three—present, the honorable George W. Dobbin, associate judge of the supreme bench of Baltimore City, assigned to and presiding in the superior court of Baltimore City; George P. Kane, esq., sheriff; George Robinson, clerk—among other were the following proceedings, to wit:

THE BALTIMORE WAREHOUSE COMPANY,
plaintiff,
vs.
THE HOME INSURANCE COMPANY OF THE
City of New York, defendant.

Be it remembered that at the above term, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and seventy-three, come into the superior court of Baltimore City here the said Baltimore Warehouse Company, by S. Teakle Wallis & John
3 H. Thomas, esquires, its attorneys, & prosecuted and sued forth out of the court here the writ of the State of Maryland of summons ad respondendum, directed to the sheriff of Baltimore City, aforesaid, in the words and of the tenor following, to wit:

BALTIMORE CITY, *to wit:*

[L. S.] State of Maryland to the sheriff of Baltimore City, greeting:

You are hereby commanded to summon The Home Insurance Company of the City of New York to appear before the superior court of Baltimore City, to be held at the court-house, in the same city, on the second Monday of June, instant, to answer an action at the suit of The Baltimore Warehouse Company; and have you then and there this writ.

Witness the honorable T. Parkin Scott, chief judge of the supreme bench of Baltimore City, the 12th day of May, 1873.

Issued 2d day of June, 1873.

GEO. ROBINSON, *Clerk.*

And the said plaintiff, by its attorney aforesaid, on the day of prosecuting and suing forth the foregoing writ, declared against the said defendant in the action aforesaid, with a notice to its declaration annexed in form following, to wit:

In the superior court of Baltimore City.

BALTIMORE CITY, *to wit:*

4 The Baltimore Warehouse Company, a corporation duly incorporated, by S. Teakle Wallis and John H. Thomas, its attorneys, sues The Home Insurance Company of the City of New York, a corporation duly incorporated—

For that the plaintiff, on the 7th day of December, in the year eighteen hundred and sixty-nine, was interested in certain merchandise contained in a part of a certain warehouse used by the plaintiff, known as State tobacco-warehouse No. 2, and situated between Frederick-street dock and Long dock, in the city of Baltimore, and so continued interested until the destruction of said merchandise by fire as hereinafter mentioned; and the said defendant, on the same day, in consideration of a premium in money then and there paid to it therefor by the plaintiff, made a policy of insurance upon the said merchandise, and thereby promised the plaintiff to insure twenty thousand dollars thereon, from said 7th day of December, 1869, at noon, until the 7th day of December, 1870, at noon, against all such loss or damage, not exceeding in amount the sum insured, as should happen by fire to the said merchandise, other than such loss or damage by fire happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, to the amount aforesaid, to be paid to the plaintiff within sixty

5 days after due notice and proof of the same; upon condition that the plaintiff in case of such loss should forthwith give notice thereof in writing to said company, and as soon thereafter as possible should deliver as particular an account of its loss and damage as the nature of the case would admit, signed by its proper officer and verified by the oath or affirmation of its proper officer, shewing the ownership of the property insured, and such other insurance as existed on the said property, and giving a copy of the written portion of the policy of each other company so insuring, if any; and should also show what was the whole cash value of the merchandise insured, the interest of the plaintiff therein, and in what general manner the building containing the said merchandise, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, as far as the said plaintiff might know and believe; and should also produce a certificate under the hand of a magistrate, notary public, or commissioner of deeds, most contiguous to the place of the fire, and not concerned in the loss, or related to the plaintiff, that he had examined the circumstances attending the fire, loss, or damage alleged, and that he was acquainted with the character and circumstances of the plaintiff, and verily believed that it, by mis-

6 fortune and without fraud or evil practice, sustained loss and damage on the said merchandise to the amount in said certificate mentioned. And the plaintiff avers that afterwards, and before the expiration of the time limited in said policy, to wit, on the eighteenth day

of July, in the year eighteen hundred and seventy, the merchandise so insured as aforesaid, to wit, cotton of the value of ninety-five thousand dollars and tobacco of the value of sixty-five hundred dollars, was accidentally and by misfortune in part destroyed and in part damaged by fire, to wit, to the value of one hundred and one thousand five hundred dollars; that the plaintiff, on its part, thereupon performed and complied with all the conditions in said policy of insurance contained as aforesaid, in so far as it was bound to comply with or perform the same. Yet though the said defendant was requested, and though it was and is bound to pay the plaintiff the said sum of twenty thousand dollars, yet the said defendant has not paid to the plaintiff the said sum, or any part thereof. And the plaintiff claims $120,000.

S. TEACKLE WALLIS,
JOHN H. THOMAS,
Attys. for Pltffs.

7 To the Home Fire Ins. Co. of New York, the defendant:

Take notice, that on the day of your appearance to this action in the superior court of Baltimore City a rule will be entered requiring you to plead thereto within fifteen days thereafter.

S. TEACKLE WALLIS,
JOHN H. THOMAS,
Attys. for Pltff.

A copy of which said declaration and notice was made and sent with the writ, thereon endorsed: "To be served on defendant."

At which mentioned second Monday of June, in the year aforesaid, being the day of the return of the foregoing writ, comes into the court here the said plaintiff, by its attorneys aforesaid, and the sheriff of Baltimore City aforesaid, to wit, George P. Kane, gentleman, to whom the foregoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"Summoned The Home Insurance Company of the Cityof New York by service on George B. Coale, agent, & copy lef.

"GEO. P. KANE, *Sheriff.*"

And the said defendant, being called, appears in court here by John H. Inglis, esquire, its attorney.

8 And thereupon the said plaintiff, by its attorneys aforesaid, prays that the said defendant answer to the declaration of the said plaintiff in the action aforesaid; whereupon it is ruled by the court here that the said defendant answer to the declaration of the said plaintiff in the action aforesaid, within the next ensuing fifteen days, or judgment by default will be rendered against it.

And thereupon the said defendant, by its attorney aforesaid, files in court here in said cause the following petition, to wit:

In the superior court of Baltimore City.

THE BALTIMORE WAREHOUSE COMPANY *vs.* THE HOME INSURANCE COMPANY OF THE City of New York.	Process served on Geo. B. Coale, esq., agent, return able to 2nd Monday of June, 1873.

To the honorable George W. Dobbin, judge of said court:

The petition of The Home Insurance Company of the City of New York,

the defendant in the above-stated cause, respectfully sheweth, that the plaintiff therein, The Baltimore Warehouse Company, is a corporation created by act of the general assembly of the State of Maryland,
9 and, in its capacity as party to a suit in court, is a citizen of the said State in which the suit is brought, and that your petitioner, the sole defendant in said cause, is a corporation created by the act of assembly of the State of New York, and is, in its similar capacity, a citizen of the said last-named State, and the matter in dispute in said cause exceeds the sum or value of five hundred dollars, exclusive of costs, the sum demanded by the plaintiff in its declaration being twenty thousand dollars.

Wherefore your petitioner prays that the said cause shall be removed for trial into the next circuit court of the United States for the district of Maryland, and that your honorable court, accepting of your petitioner good and sufficient surety, which is hereby offered, for your petitioner's entering in the said circuit court of the United States for the district of Maryland, on the first day of its session, copies of the process and declaration in said cause, and for its appearing therein, proceed no further in said cause; and your petitioner will ever, &c.

{ HOME INSURANCE L. S. COMPANY NEW YORK. }

A. N. WILLMARTH, *V. P.*
J. H. WASHBURN, *S'c'y.*

THE STATE OF MARYLAND,
City of Baltimore:

On this 9th day of June, 1873, George B. Coale comes in per-
10 son before me, and, being sworn on the Holy Evangely of Almighty God, says that he, deponent, is agent in the city of Baltimore of the Home Insurance Company of the City of New York, and that within his own knowledge the facts stated in the within petition are true.

JNO. T. MADDOX, *J. P.*

Which being read and heard, the court passed and filed in said cause the following order, to wit:

In the superior court of Baltimore City.

THE BALTIMORE WAREHOUSE COMPANY
vs.
THE HOME INSURANCE COMPANY OF THE CITY of New York.

Ordered by the court, this 20th day of June, 1873, on the petition of the defendant filed herein, that this cause be removed into the next circuit court of the United States to be held in the district of Maryland, upon the said defendants offering good & sufficient surety, in the sum of twenty thousand dollars, for entering in said circuit court, on the first day of its next session, copies of the process against it, (the defendant,) and of all pleadings, depositions, testimony, & other proceed-
11 ings in said cause affecting or concerning it, the said defendant.

GEORGE W. DOBBIN.

And thereupon the defendant filed in court here the following bond, to wit:

Know all men by these presents that we, The Home Insurance Com-

pany of the City of New York, a corporation created by and existing under the laws of the State of New York, and George B. Coale and James Carey Coale, of the city of Baltimore, in the State of Maryland, are held and firmly bound unto The Baltimore Warehouse Company and its assigns in the full and just sum of twenty thousand dollars, to the payment whereof we bind ourselves jointly and severally, firmly by these presents, subscribed by us and sealed with our respective seals, and dated this twenty-first day of June, 1873.

Whereas The Home Insurance Company of the City of New York is about to remove a suit instituted against it by the said Baltimore Warehouse Company, in the superior court of Baltimore City, into the next circuit court of the United States to be held in the district of Maryland:

Now, the condition of this obligation is such that if the said Home Insurance Company of the City of New York shall enter or cause
12 to be entered in said circuit court, on the first day of its session, copies of the process against it, the said Home Insurance Company of the City of New York, & of all pleadings, depositions, testimony, and other proceedings in said cause affecting or concerning it, The Home Insurance Company of the City of New York, then this obligation to be void.

In witness whereof The Home Insurance Company of the City of New York hath caused these presents to be sealed with its corporate seal, and attested by the signature of its vice-president and secretary.

A. N. WILLMARTH, *V. P.*
[L. S.] J. H. WASHBURN, *S'c'y.*
GEO. B. COALE. [SEAL.]
JAS. CAREY COALE. [SEAL.]

Witness:
WM. J. MORRIS.

(Which said bond is thus endorsed, to wit:) Bond approved. George W. Dobbin. Plaintiff's costs, $7.55; defendant's costs, $15.60.

STATE OF MARYLAND,
City of Baltimore, sct.:

I, George Robinson, clerk of the superior court of Baltimore
13 City, do hereby certify that the aforegoing is a full, true, and entire transcript, taken from the record and proceedings of the said court in the therein-entitled cause.

In testimony whereof I hereunto set my hand and affix the seal of the superior court of Baltimore City, aforesaid, on this thirty-first day of October, eighteen hundred and seventy-three.

[L. S.] GEO. ROBINSON, *Clerk.*

And now here at this day, to wit, the first Monday in November, in the year 1873, came into the circuit court here as well the Baltimore Warehouse Company, by S. Teakle Wallis & John H. Thomas, esquires, its attorn*ies*, as The Home Insurance Company of New York, by A. W. Meachen & Thomas Donaldson, esquires, its attorn*ies*.

And afterwards, to wit, on the 29th day of November, in the year

1873, aforesaid, the said Home Insurance Company, by its attorn*ies* aforesaid, filed in court here the following plea, to wit:

In the circuit court of the United States for the fourth circuit in and for Maryland district, November, 1873.

14	THE BALTIMORE WAREHOUSE COMPANY *vs.* THE HOME INSURANCE COMPANY OF THE City of New York.	Action of assumpsit on policy of insurance.

And the said "The Home Insurance Company of the City of New York," the defendant in this action, by John A. Inglis and Arthur W. Machen, its attorneys, says:

For a first plea, that the said defendant never was indebted as alleged; and for a second plea, that the said defendant did not promise as alleged; and for a third plea, that the plaintiff hath not, on its part, performed and complied with all the conditions in said alleged policy of insurance contained, as in its said declaration above are stated, in so far as it was bound to comply with or perform the same, in this, that the plaintiff did not forthwith, after the said alleged loss, give notice thereof in writing to the said defendant, and did not as soon thereafter as possible deliver as particular an account of its loss and damage as the nature of the case would admit, signed by its proper officer and verified by the oath or affirmation of its proper officer, showing the ownership of the property insured, and such other insurance as existed on the said property, and giving a copy of the written portion of the policy
15 of each other company so insuring, if any, and did not show what was the whole cash value of the merchandise insured, the interest of the plaintiff therein, and in what general manner the building containing the said merchandise, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, as far as the said plaintiff knew and believed; and did not produce a certificate under the hand of a magistrate, notary public, or commissioner of deeds, most contiguous to the place of the fire and not concerned in the loss or related to the plaintiff, that he had examined the circumstances attending the fire, loss, or damage alleged, and that he was acquainted with the character and circumstances of the plaintiff, and verily believed that it, by misfortune and without fraud or evil practice, sustained loss and damage on the said merchandise to the amount in said certificate mentioned; and

For a fourth plea, that due notice and proof of the loss or damage by the plaintiff in its said declaration, above alleged, was not made by the plaintiff before the bringing of its suit herein.

And for a fifth plea, that in and by the said policy and a certain condition of insurance thereto annexed and made part thereof, and of the contract therein, it was provided that goods held on storage should not be within the scope and operation of the said policy or contract nor insured thereby, unless separately and specifically insured, and
16 the said cotton, in the plaintiff's declaration above mentioned, and therein alleged to have been destroyed in part and damaged in part by the fire therein alleged, was at all times before and at the time of the said fire held by the plaintiff on storage, and not otherwise, and was not nor is in the said policy separately and specifically mentioned and insured.

And for a sixth plea, that before the bringing of this suit the defendant satisfied, discharged, and made good to the plaintiff all such loss and damage as happened by the fire in the declaration above alleged to the property in said policy of insurance described and insured, by payment; and

For a seventh plea, that, before this action, the defendant satisfied and discharged the plaintiff's claim by payment; and

For an eighth plea, that, after the fire, in the declaration above by the plaintiff alleged, and the destruction and damage of cotton thereby, the plaintiff and the defendant came to an agreement and adjustment of the actual loss and damage of the plaintiff by reason of said destruction and damage by said fire of cotton held by the plaintiff in the warehouse in the declaration mentioned, and the defendant, before this action brought, satisfied the said loss and damage as so agreed and adjusted, and the accord and agreement thereof.

JOHN A. INGLIS,
A. W. MACHEN,
Attys. for Defendant.

17 Whereupon the said Home Insurance Company, by its said attorn*ies*, prays that the said Baltimore Warehouse Company may reply to the plea of the said Home Insurance Company in the action aforesaid; whereupon it is ruled by the court here, that the said Baltimore Warehouse Company reply to the plea of the said Home Insurance Company in the action aforesaid, or judgment will be rendered against it by default.

And the said Baltimore Warehouse Company, by its said attorn*ies*, prays leave of the court here to imparle until the first Monday in April, next, and it has it. The same day is given to the said Home Insurance Company, then and there, &c.

At which said first Monday in April, to wit, in the year of our Lord 1874, come again into the circuit court here the parties aforesaid by their attornies aforesaid.

And afterwards, to wit, on the 6th day of April, in the year (1874) aforesaid, the said Baltimore Warehouse Company, by its said attorn*ies*, filed in court here the following replication, to wit:

In the circuit court of the United States for the district of Maryland.

THE BALTIMORE WAREHOUSE COMPANY
vs.
THE HOME INSURANCE COMPANY OF THE City of New York.

18 The plaintiff joins issue with the defendant upon its first, second, third, fourth, fifth, sixth, seventh & eighth pleas.

And for further replication to the third plea, the plaintiff says that the defendant waived a performance of & compliance with the conditions in said plea mentioned.

And for further replication to the fourth plea the plaintiff says that the defendant waived the making by the plaintiff of due notice & proof of said loss.

WALLIS & THOMAS,
Attys. for Plff.

And afterwards, to wit, on the 14th day of April, in the year (1874) aforesaid, the said Home Insurance Company, by its said attornies, filed in court here the following rejoinder, to wit:

In the circuit court of the United States for the district of Maryland.

THE BALTIMORE WAREHOUSE COMPANY,
vs.
THE HOME INSURANCE COMPANY OF THE City of New York.

The defendant, by its said attorneys, as to the said replication
19 to the third plea, says that the defendant did not waive a performance of and compliance with the conditions in said plea mentioned.

And as to the said replication to the fourth plea the defendant says that the defendant did not waive the making by the plaintiff of due notice and proof of said loss.

THOMAS DONALDSON,
A. W. MACHEN,
Attorneys for Defendant.

Whereupon, for trying the issues aforesaid above joined between the parties aforesaid, it is ordered by the court here, with the consent of the parties aforesaid, by their attornies aforesaid, that twelve persons from the pannel of petit jurors returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the statute in such case made and provided: And thereupon the twelve persons being so drawn by ballot, and called, come; that is to say, George P. Gover, William Stahl, Christopher Maguire, Archibald Davis, James D. Armstrong, William H. Dorsey, J. Frank Getty, Charles A. Conner, George Johnson, George Hoskins, Thomas W. Lease, and Charles Bent, who being impanneled and sworn to say the truth in the premises, upon their oath do say that the said Home Insurance Company did undertake and promise in manner and form as the said plaintiff
20 hath above against it complained, and they assess the damages of the said plaintiff to the sum of sixteen thousand five hundred and eighty-five dollars and seventy-three cents.

And thereupon the said defendant, by its said attornies, saith that the court here ought not to proceed to render judgment against, of, and upon the said verdict, by the jurors aforesaid in form aforesaid found, and prays that the said verdict may be set aside, and that the issues aforesaid may be tried anew by other jurors, to be afresh impanneled, and files in court here the following reasons, that is to say:

In the circuit court of the United States for the district of Maryland.

BALTIMORE WAREHOUSE CO.
vs.
HOME INSURANCE COMPANY, OF THE CITY OF New York.

The defendant moves for a new trial in this case for the following reasons:

1. That the verdict of the jury is against the evidence.
2. That is against the weight of evidence.

3. That the damages awarded by the verdict are excessive.

TH. DONALDSON,
A. W. MACHEN,
Attys. for Deft.

21 Whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, it is, this sixth day of June, in the year 1874 aforesaid, considered by the court here that the said verdict is in nowise insufficient or erroneous, and that the same ought not to be set aside, and that no new trial ought to be had of the issue aforesaid; therefore it is considered by the court here that the said Baltimore Warehouse Company recover against the said Home Insurance Company as well the sum of sixteen thousand five hundred and eighty-five dollars and seventy-three cents, the sum found by the jury, with interest from the 6th day of June, 1874, as the sum of , adjudged by the court here unto the said plaintiff, on his assent, for its costs and charges by it about its suit in this behalf expended; and the said defendant in mercy, &c.

MEMORANDUM.—Before the jurors aforesaid withdrew from the bar of the court here the said Home Insurance Company, by its attornies aforesaid, filed in court here the following bills of exceptions, to wit:

1st bill of exceptions.

22 In the circuit court of the United States for the district of Maryland.

THE BALTIMORE WAREHOUSE COMPANY
vs.
THE HOME INSURANCE COMPANY OF THE CITY of New York.

At the trial of this case the plaintiff produced and read in evidence to the jury the following policy of insurance, the execution whereof by the defendant at the time of the date thereof was admitted by the defendant's counsel.

Stock company—Cash capital $2,000,000.

HOME INSURANCE COMPANY OF THE CITY OF NEW YORK.

No. 1542.] Policy issued [$20,000.

By this policy of insurance the Home Insurance Company, in consideration of one hundred dollars, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Baltimore Warehouse Company against loss or damage by fire to the amount of twenty thousand dollars, on merchandise hazardous or extra hazardous, their own or held by them in trust, or in which they have an interest or liability, contained in that part of the State tobacco warehouse No. 2,
23 used by them, lying between Frederick-st. dock and Long dock, separated by a street from the south end of the Maryland Sugar Refinery. Other insurance permitted without notice unless required.

To cover whilst on the street and pavement around said warehouse. As per application.

And the Home Insurance Company above named, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their executors, administrators, or assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified during one year, to wit, from the seventh day of December, one thousand eight hundred and sixty-nine, (at twelve o'clock at noon,) until the seventh day of December, one thousand eight hundred and seventy, (at twelve o'clock at noon,) the said loss or damage to be estimated according to the actual cash value of the said property at the time the same shall happen; and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions annexed to this policy, unless the property be replaced by similar property of equal value and goodness, or the company have given notice of their intention to rebuild or repair the damaged premises: Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire. And provided further,
24 that if any other insurance has been or shall hereafter be made upon the said property, and not consented to by this company in writing hereon, or if the said property shall be sold or conveyed, or the the interest of the parties therein changed, or if this policy shall be assigned without the consent of the company, obtained in writing hereon, or if the insured shall make any attempt to defraud the company, then and in every such case this policy shall be null and avoid. In case of loss the insured shall not be entitled to demand or recover on this policy any greater proportion of the loss or damage sustained to the subject insured than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises, at any time during the period for which this policy would otherwise continue in force, shall be used for the purpose of carrying on therein any trade or vocation, or for storing and keeping therein any articles, goods, or merchandise denominated hazardous or extra hazardous or specially hazardous, in the second class of the classes of hazards annexed to this policy, except as herein specially provided for, or hereafter agreed to by this corporation in writing, upon this policy, from thenceforth, so long as the same shall be so used, this policy shall be of no force or effect. And it is moreover agreed and declared, that this insurance is not intended to apply to or cover
25 any books of account, written securities, deeds, or other evidences of title to property, nor to bonds, bills, notes, or other evidences of debt; nor to money or bullion; and that casts, curiosities, engravings, jewelry, jewels, medals, models, musical and scientific instruments, (pianofortes in dwelling-houses excepted,) paintings, patterns, plate, precious stones, printed music, prints, sculptures, statuary, and watches, are not deemed to be included in any insurance, unless particularly mentioned in writing in the policy, with specific amounts thereon.

☞ Whenever gunpowder, phosphorus, saltpetre, or any other article subject to legal restriction, shall be kept in said premises in quantities greater than the law allows, or in a manner different from that prescribed by law, unless said use or keeping is specially provided for herein, this policy shall be null and void. Petroleum and earth-oil, in a crude or unrefined state, are hereby declared uninsurable, and the keeping or

storage of the same in the insured premises shall also render this policy null and void.

☞ If any property covered by this insurance be damaged by lightning, or the bursting of a boiler, or by explosion from any cause, this company shall not be liable therefor, unless fire ensue, and then for the loss by fire only.

☞ This policy is made and accepted in reference to the terms and conditions herein contained and hereto annexed, which are hereby declared to be a part of this contract, and are to be used and resorted to in order to determine the rights and obligations of the parties
26 hereto, in all cases not herein otherwise specially provided for.

In witness whereof, The Home Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of New York; but this policy shall not be valid unless countersigned by Geo. B. Coale, agent of said Home Insurance Company at Baltimore, Md.

CHAS. J. MARTIN, *President.*

JOHN MCGEE, *Secretary.*

Baltimore, this 7 day of December, 1869. Prem. paid.

GEO. B. COALE, *Agent.*

[50-c. internal-revenue stamp.]

Read the conditions, &c., on inside pages.

The Home Insurance Company hereby consent that the interest of in the within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to ,
, 186 .

——— ———, *Agent.*

For value received hereby transfer, assign, and set over unto and assigns all title and interest in this policy, and all advantage to be derived therefrom, subject to all the terms and conditions therein mentioned and referred to.

Witness hand and seal this day of , 186 .

Sealed and delivered in presence of—

Classes of hazards.

27 FIRST CLASS.

Not hazardous.—Staple foreign dry goods in packages and staple domestic dry goods; also household furniture in dwelling-houses may be insured at 5 cents per $100, in addition to the rate of the building.

Hazardous, No. 1.—The following articles of merchandise are charged 10 cents per $100 more than the building, but do not increase the rate of the building, nor its other contents: Stocks of general dry goods, including cotton batts and wadding; of embroideries and laces; of tailors' goods and ready-made clothing; also, agricultural implements; boots and shoes; coffee; flour; furs or peltries in packages; glass (window or plate or looking-glasses) in boxes; hatters' furs; hardware and cutlery; hides and leather; hops in bales; indigo; iron ware; metals (in bars, rods, pigs, or sheets;) paints, paper-hangings; paper in reams; pot, pearl, and soda ashes; rice; salt; spices; straw braid and straw hats, in packages

as imported; teas; thrashed grain; tin, copper, and sheet-iron ware; tobacco; snuff; whalebone; wine in casks and in glass, in packages.

Extra-hazardous, No. 1.—The following articles of merchandise are charged 20 cents per $100 more than the building, but do not increase the rate of the building, nor its other contents: Artificial flowers and feathers; brush-makers' stock; gas-fixtures; color-men's stock; china, glass, or earthen ware, or window or plate glass, or looking-glasses, unpacked; fishing tackle; furs, unpacked; liquor and wines in glass, unpacked; musical instruments and printed music; percussion caps;
28 pictures and prints; precious stones; silver plate and plated ware; straw goods; India-rubber hard goods; also, stocks of books; of cabinet ware; of confectionary; of daguerreotype materials; of carriages; of feathers; of jewelry; of watches; of watch-makers' tools; of lamps; of brushes; of millinery; of military goods; of needles; of optical and mathematical instruments; of paper boxes and band-boxes; of perfumery; of pocket-books; of segars in segar stores; of stationery; of toys; and of fancy goods.

SECOND CLASS.

Hazardous, No. 2.—The following trades, occupations, and merchandise add to the rate of the building and its contents 10 cents per $100: Belting and car-springs of Indian rubber or gutta percha; card printing; china or earthen ware, or glass ware in boxes, crates, or casks; firecrackers in packages; flax, hemp, manilla, and sisal grass, and tow in bales; flocks; grocers' stocks; gum shellac; gutta-percha and India rubber manufactured; hat-ironing; oil, (fish and vegetable;) provisions; sail-making; spiritous liquors; sugars; sulphur; tallow; wine-dealers' stock, (not including wine in glass unpacked;) wool.

Extra-hazardous, No. 2.—The following articles of merchandise add to the rate of the building and its contents 20 cents per $100: Alcohol; apothecaries' stock, (retail only;) basket-sellers' stock; china or earthen or glass ware, or looking-glasses, with privilege of packing or unpacking; cotton in bales; cotton-brokers' samples; drugs, (importers' stocks of, without inflam'able acids or phosphorus;) eating-houses; essential oils; gum copal; India-rubber and gutta-percha goods; hay and
29 straw pressed in bundles; manilla and sisal grass unpacked; matches, stocks of, on sale; oakum in bales; oiled clothing; painters' stock; pitch; perfumers' stock; porter-houses; rags in packages; rosin and rosin oil; ship chandlery; turpentine; tar; spirits of turpentine; varnish; wood and willow ware.

Extra-hazardous, No. 3.—The following trades and occupations add to the rate of the building and its contents 20 cents per $100: Bakeries with ovens outside the building and using coal; basket-bleaching; basket-making; blacksmiths' shops; box-repairing workshops; brass turning or working; carving; charcoal-making; copper-plate printing; daguerreotyping; electro-plating; fringe-making by hand-power; gas-fitting; gilding; gold-pen making; gun-repairing; hat-bleaching; hat-finishing; jewelry-manufacturing; lamp-manufacturing; liquor-bottling establishments; lithographing; map mounting and varnishing; morocco-manufacturing; plumbing and pewtering; printing of newspapers and engravings by hand-power only; pocket-book making; provision warehouses, with brick smoke-houses attached; segar-making; silversmithing; tin, or sheet-iron, or copper working; turning in wood; umbrella-manufacturing; upholstering; also, private stables.

Specially hazardous.—Acids, (nitric, sulphuric, muriatic, and other

acids causing ignition;) band-box and paper-box making; bakeries; bark-mills; bellows-making; bleaching-works; blind-makers' shops; blacksmithing; block and pump making; book-binderies; boat-builders' shops; brass-founders; breweries; brick-yards with kilns; brimstone-works; brush-manufactories; burning-fluid; cabinet-makers' shops; chair-makers' shops; carpenters' shops; candle-manufactories; coopers' shops; corn-kilns; camphene on sale; coppersmiths' shops with forges; coffee and spice-mills; chemical lab'ratories; coach-makers' shops; comb-manufactories; confectionery manufactories; coopers' shops; *corn-kilns;* cotton-mills; cotton-presses; cotton unpacked; distilleries and rectifying establishments; dyeing establishments; druggists' stock, (wholesale;) drug and spice mills; ether; fur-dressing establishments; fire-works; fire-works' manufactories; flax-mills; floor-cloth manufactories; fringe manufactories; fulling-mills; flax unpacked; gas manufactories; glass manufactories; grate manufactories; grist or flouring mills; gun manufactories; gunpowder; hat manufactories; hay unpacked; houses building or repairing; hemp unpacked; India-rubber and gutta-percha manufactories; hay-presses; hemp manufactories; hotels; ink manufactories; iron-foundries; ivory-black and lamp-black manufactories; lamp-manufacturing; lime-yards and sheds; lime unslacked; livery-stables; lumber-yards; looking-glass and picture-frame manufactories; machine-shops; mahogany-yards; malt-houses; matches manufactories; metal-mills; musical-instrument manufactories; mungo; oiled-clothing manufactories; oil-mills and manufactories; omnibus-stables; plating; plated-ware manufacturing; packing-buildings and yards; paper-mills; paper-hanging manufactories; percussion-cap manufactories; perfumery-manufactories; planing or grooving or moulding mills; powder-mills; printing of books and job-printing; phosphorous; pork-houses; print-works; rolling-mills; rope and cordage manufactories; rag and junk-shop stock; safe (iron) manufactories; stove manufactories; saltpetre; ships building or repairing; sash-maker's shops; saw-mills; shoddy; smoke-houses; soap manufactories; silversmiths' manufactories; snuff-mills; spirit-gas manufactories and spirit-gas on sale; stave-yards; steamboats; steam-engines in use; sugar-refiners; tobacco manufactories; type and stereotype foundries; tallow-melting establishments; tanneries; tar-boiling houses; taverns; theatres and other places of public exhibition; timber-yards; tow unpacked; turpentine distilleries; varnish manufactories; woolen-mills; wool-waste; wheelwrights' shops, and generally all workshops, mills, and manufacturing establishments, and all trades and occupations not above enumerated as hazardous or extra-hazardous.

The use of camphene, phosgene, spirit-gas or burning-fluid, or any other inflammable liquid as a light, in stores, warehouses, shops, or manufactories, subjects the property insured to an additional charge, and permission for such use must be endorsed in writing on the policy.

Plate-glass doors and windows, when the plates are of the dimensions of three square feet or more, are subject to an extra premium, and must be separately and specifically insured.

Fences, privies, and other yard fixtures, also store furniture and fixtures, must be separately and specifically insured.

CONDITIONS OF INSURANCE.

1. Applications for insurance on property must be in writing, and must specify the construction and materials of the building to be in-

sured, or containing the property to be insured; by whom occupied; whether as a private dwelling or how otherwise; its situation with respect to contiguous buildings and their construction and materials; and whether any manufacturing is carried on within or about it; and
32 in relation to the insurance of goods and merchandise, the application must state whether or not they are of the description denominated hazardous, extra-hazardous, or specially hazardous, and such survey and description shall be taken and deemed to be a part and portion of the policy issued thereon, and a warrantry on the part of the insured.

2. If any person effecting insurance in this company shall make any misrepresentation or concealment touching the risk to be assumed, or if, during the existence of this policy, or any renewal thereof, the risk shall be increased by any means within the control of the insured, or by the occupation of the premises for more hazardous purposes than are permitted by this policy, or if the assured, at or before the taking of any renewal, shall fail to notify the company of any increase of the hazard, whether within or without the premises, and have the same endorsed hereon, this policy shall be void. Every renewal shall be deemed to be made upon the faith of the representation on which the original policy was granted, unless superseded by a new description of the risk.

3. This insurance may be terminated at any time at the request of the insured, in which case the company may retain the customary short rates for the time the policy has been in force. The insurance may also be at any time terminated at the option of the company, on giving notice to that effect and refunding a ratable proportion of the premium for the unexpired term of the policy.

33 4. If the property to be insured be held on trust or on commission, or be a leasehold or other interest not absolute, it must be so represented to the company, and expressed in the policy in writing; otherwise the insurance as to such property shall be void; and in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, with their respective interests therein.

Goods held on storage must be separately and specifically insured.

5. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium.

6. If at the happening of any fire the insured shall have insurance under a floating policy or policies, not specific, but covering goods generally, in various places not designated, and yet within limits which include the premises or property herein insured, such policy, as between the insured and this company, shall be considered as covering any excess of sound value of the subject insured beyond the amount covered by the specific insurances thereon; and to determine the amount for which this company is liable in case of loss, such floating policy shall be considered an insurance on the property to the extent of such excess.

7. In case of claim for loss or damage on a policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the insured in conformity with the conditions of this policy, in like manner as if no assignment had been made; otherwise
34 this policy shall be void and of no force or effect whatever, and all liability on the part of this company shall cease.

8. In case of fire or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property. And if they shall fail to do so, this company shall not be held liable to make good the loss and damage sustained in consequence of such neglect. And it is mu-

tually understood that there can be no abandonment to the insurers of the subject insured.

9. Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing to the company, or its agent, and as soon after as possible they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just; showing also the ownership of the property insured; what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; what was *there* interest therein; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they
35 know or believe. They shall also produce a certificate under the hand and seal of a magistrate, notary public, or commissioner of deeds, most contiguous to the place of the fire and not concerned in the loss, as a creditor or otherwise or related to the insured or sufferers, stating that he has examined the circumstances attending the fire, loss, or damage alleged; and that he is acquainted with the character and circumstances of the insured or claimant; and that he verily believes that he, she, or they have, by misfortune, and without fraud or evil practice, sustained loss and damage on the subject insured to the amount which such magistrate, notary public, or commissioner of deeds shall certify. When merchandise or other personal property is partially damaged, the insured shall forwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged; and shall cause a list or inventory to be made and furnished to the company of the whole, naming the quantity and cost of each. The amount of sound value and of damage may then be ascertained by the examination and appraisal of each article by disinterested appraisers mutually agreed upon, one-half of the appraisers' fees to be paid by the insurers; and the insured shall, if required, submit to an examination under oath by the agent or attorney of the company, and answer all questions touching his, her, or their knowledge of anything relating to
36 such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing, and whenever required in writing the insured, or person claiming, shall produce and exhibit his books of account and other vouchers to the insurers, or their agent, at the office of this company in support of his claim, and permit extracts and copies thereof to be made; and shall also produce certified copies of any bills or invoices of property destroyed or damaged, the originals of which may have been lost, mislaid, or destroyed; and shall also exhibit to any person named by the company, and shall permit to be examined by them, any property damaged on which loss is claimed, or any property saved which was insured by this policy, and until such proofs, declarations, and certificates are produced, and such appraisals and examination of property permitted by the claimant, the loss shall not be payable.

All fraud or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claim on this company under this policy.

10. In case of any loss on or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged,

with others of the same kind and quality, or to take the goods at their appraised value, or to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do, within thirty days after having received the preliminary proofs of loss required by the ninth article of these conditions. In case differences shall arise concerning the amount of any loss or damage by fire, the matter shall,
37 at the written request of either party, be submitted to the judgment of arbitrators indifferently chosen, whose award in writing, as to the amount of such loss and damage, shall be binding on the parties, but such award shall not determine any question as to the liability of this company under this policy.

11. When property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers, in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

12. The company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or of deviations from the laws or regulations of police, made to prevent accidents from fire, in places where laws and regulations on this subject exist.

13. It is furthermore hereby expressly provided that no suit or action of any kind against said company for the recovery of any claim upon, under, or by virtue of this policy shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur, and in case any such suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed
38 as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

DIRECTORS.

CHARLES J. MARTIN, *President.* ARTHUR F. WILLMARTH, *Vice-President.*

George C. Collins, Danford N. Barney, Lucius Hopkins, Thomas Messenger, William H. Mellen, Homer Morgan, Levi P. Stone, James Humphrey, George Pearce, Ward A. Work, James Low, Isaac H. Frothingham, Chas. A. Bulkley, George D. Morgan, Theodore McNamee, Oliver E. Wood, F. H. Cossitt, Wm. R. Fosdick, David J. Boyd, Albany, N. Y.; Lewis Roberts, Samuel B. Caldwell, A. J. Wills, Alfred S. Barnes, George Bliss, Roe Lockwood, Levi P. Morton, Curtis Noble, John B. Hutchinson, Charles P. Baldwin, Amos T. Dwight, Henry A. Hurlbut, Jesse Hoyt, William Sturgis, Chas. J. Martin, John R. Ford, Geo. T. Stedman, Cincinnati, O.; Sidney Mason, A. F. Willmarth, William Claflin, Boston, Mass.; Robert Wood, Montreal, C. E.; P. C. Van Schaick, Thomas J. Buckley, James S. Sturges, John McGee, secretary; Wm. H. Townsend, Oliver S. Carter.

39 Baltimore, Oct'r 10th, 1870. Received of the Home Insurance Comp'y, of New York, by the hand of Geo. B. Coale & Morris, agents, the sum of twelve hundred and forty-seven & $\frac{15}{100}$ dollars, being in full of all claims and demands for loss and damage by fire on the eighteenth day of July, 1870, on 24 bales cotton, paid to A. D. McLeod & Co. and W. B. Hooper, insured by policy No. 1542, issued at the Baltimore agency of said company.

Witness my hand and seal the day and year first above written.

JAMES HOOPER, *Pres't.* [SEAL.]

Amt. of claim, 1,247.15.
" of draft, 1,247.15.
Duplicate of above receipt forwarded to Home Insurance Co.

GEO. B. COALE & MORRIS, *Agts.*

(Indorsed:) No. 1542. Home Insurance Company, office, No. 135 Broadway, New York. Cash capital, $2,000,000. Baltimore Warehouse Co. On cotton tobacco warehouse, $20,000. Premium, $100; policy, ; survey, ; stamp duty, —$100. This policy expires 7th December, 1870. Geo. B. Coale, agent, Baltimore.

40 The plaintiff further offered in evidence the two following instruments, the execution whereof by the defendant at the time when they respectively purport to have been executed was also admitted by the defendant:

[5-c. int. rev. stamp.]

It is hereby agreed between the Home Insurance Company of the city of New York, and the Baltimore Warehouse Company of the city of Baltimore, that, in consideration of the sum of five dollars to the said Home Insurance Company, paid by the said Baltimore Warehouse Company, before the execution of these presents, the receipt whereof is hereby acknowledged, the said Baltimore Warehouse Company may and shall have the right to bring any suit or action against said Home Insurance Company under or upon the policy of said company, number fifteen hundred and forty-two, (1542,) dated on the seventh (7) day of December, in the year eighteen hundred and sixty-nine, or upon any agreement or agreements in said policy contained, provided such suit or action shall be commenced before the eighteenth day of July, in the year eighteen hundred and seventy-two; and it is further agreed that the thirteenth (13th) condition of insurance contained in the said policy of insurance of said Home Company, hereinbefore referred to, shall be deemed and taken to have been and to be altered and dispensed with to the extent to which the same is modified by this

41 agreement. In witness whereof the said The Home Insurance Company has caused this agreement to be signed by its president and attested by its secretary, in the city of New York, and it has also caused the same to be countersigned by George B. Coale, agent of the said company at Baltimore, Maryland, and the said Baltimore Warehouse Company has caused this agreement to be signed by its president.

Witness the hands of the said president and secretary of the said Home Insurance Company, and the hand of the president of the said Baltimore Warehouse Company, set hereto this seventh day of July, eighteen hundred and seventy-one.

A. F. WILLMARTH,
President Home Insurance Co.

J. H. WASUBURN,
Secretary Home Insurance Co.

GEO. B. COALE & MORRIS,
Agents Home Ins. Co.

E. T. ATKINSON.

JAMES HOOPER,
President Baltimore Warehouse Company.

E. T. ATKINSON.

It is hereby agreed, between the Home Insurance Company of the City of New York, and the Baltimore Warehouse Company of the city of Baltimore, that in consideration of the sum of five dollars, to the said Home Insurance Company, paid by the said Baltimore Warehouse
42 Co., before the execution of these presents, the receipt whereof is hereby acknowledged, the said Baltimore Warehouse Company may and shall have the right to bring any suit or action against the said Home Insurance Company under or upon the policy of said company, number fifteen hundred and forty-two, (1542,) dated on the seventh (7) day of December, in the year eighteen hundred and sixty-nine, or upon any agreement or agreements in said policy contained, provided such suit or action shall be commenced before the first day of September, in the year eighteen hundred and seventy-three; and it is further agreed that the thirteenth (13) condition of insurance contained in the said policy of insurance of said Home Company, hereinbefore referred to, shall be deemed and taken to have been and to be altered and dispensed with to the extent to which the same is modified by this agreement.

In witness whereof the said The Home Insurance Company has caused this agreement to be signed by its president, and attested by its secretary, in the city of New York; and it has also caused the same to be countersigned by George B. Coale, agent of the said company at Baltimore, Maryland; and the said Baltimore Warehouse Company has caused this agreement to be signed by its president.

Witness the hands of the said president and secretary of the
43 said Home Insurance Company, and the hand of the president of the said Baltimore Warehouse Company, set hereto this eighth day of July, eighteen hundred and seventy-two.

CHAS. J. MARTIN,
President Home Insurance Co.

J. H. WASHBURN,
Secretary Home Insurance Co.

GEO. B. COALE & MORRIS,
Agents Home Insurance Co.
JAMES H. BARNEY,
President Baltimore Warehouse Company.

The plaintiff then called WILLIAM B. HOOPER, who, being duly sworn, testified that during the year 1870 (as well as before and subsequently) he was storekeeper of the Baltimore Warehouse Company; and that on the 18th day of July, 1870, the State tobacco warehouse No. 2 was destroyed by fire; that at that time that part of the said warehouse which was occupied by the Baltimore Warehouse Company contained goods in store, viz, cotton, tobacco, and bark; that the whole amount of such cotton was 1,452 bales, owned and previously deposited by the following-named persons: Hough, Clendenin & Co. had 675 bales, J. Henry Smith had 97 bales, William B. Hooper, 3 bales; J. N. Lewis, 4 bales; Elliott Brothers, 111 bales; Hawkins, Williamson & Co., 328 bales; John J. Middleton, 12 bales; A. D. McLeod & Co., 21 bales; Dunn, Todd & Co., 148 bales; Mercer & Johnson, 13 bales; T. L.
44 Brauns & Co., 35 bales, and Wagner & Co., 5 bales.

That the said tobacco amounted to 32 hogsheads, and belonged to F. W. Beck & Co., and that the bark belonged to McClellan & Co.; that a great deal of said property was entirely destroyed. Several hundred bales of cotton were saved in a more or less dam-

aged condition. Some trifling quantity of tobacco was saved, and 3 or 4 bags of bark were saved in a damaged condition. The bark was worth $1 or $1,50 per bag, & that which was sold after the fire sold for 15 or 15½ per bag. Representatives of insurance companies took charge of what was saved, and arranged it and sold it at auction. Witness remembered seeing Mr. Thomas J. Carey, Mr. Simon of the People's Co., Mr. Cox, and Capt. Clark on the lot while the cotton was being assorted, and also he saw Mr. George B. Coale, the agent of the defendant, there. Each company was trying to pick out its own marks. What was there was sold at auction. The saved bark, amounting to 30 or 40 bags, was taken away by the owner, Mr. McClellan.

On cross-examination the witness further testified that was not acquainted with Mr. Coale previously to the fire; that the witness took care of the cotton, &c., after the fire, receiving his instructions from his father, James Hooper, the president of the warehouse company; that he saw his father in conversation with insurance agents, namely, Mr. Cox, Mr. Simons, and three or four others whose names he had forgotten.

45 ALBERT RHETT, the next witness called by the plaintiff, testified that he was a merchandise broker, principally cotton broker; that before the said fire he had examined, & held for sale at the time of the fire, samples of Hough, Clendening & Co.'s 675 bales of cotton, and they averaged low middling, a good style of the article, worth at the time of the fire, 18¾ cents per pound; that he also examined what was saved of it immediately after the fire; that all of the cotton which was burned averaged 425 pounds per bale, & was worth 18¾ cents per pound.

WILLIAM ELLIOTT, the next witness called by the plaintiff, testified that he was a member of the firm of Elliott & Co., owners of 111 bales of cotton stored in warehouse No. 2 at the time of the fire; were insured in three companies, viz, Peabody, Potomac, and Royal.

Mr. JEWETT, called by the plaintiff, testified that he was a member of the firm of F. W. Beck & Co., owners of 32 hogsheads of tobacco stored in said warehouse; that it was worth a little over $6,000, & that only a small portion of it was saved—about 14 piles, worth from $2 to $5 per pile.

The following agreement of parties was then read in evidence to the jury by the plaintiff:

In the circuit court of the United States for the fourth circuit in
46 & for the district of Md.

BALTIMORE WAREHOUSE COMPANY }
vs.
THE HOME INS. CO. OF NEW YORK. }

It is admitted that the plaintiff and defendant were both duly incorporated before the seventh day of December, 1869, and that on that day the defendant issued to the plaintiff the policy marked "A," and that said defendant was competent under its charter to make said contract; that on the 18th of July, 1870, State tobacco warehouse No. 2, therein mentioned, was destroyed by fire; that in that part of said tobacco

warehouse No. 2 used by the Balt'o. Warehouse Co., lying between Frederick-street dock & Long dock, separated by a street from the south end of the Maryland Sugar Refinery, at the time of said fire, property of the following kind & value stored by the following persons, in accordance with receipts given by the plaintiff to such depositors respectively, of which the following is an example:

47 *Notice.*

The property mentioned in this receipt is held by this corporation as bailees only, and is not insured by this corporation.

BALTIMORE WAREHOUSE COMPANY.

(Copy.)

Incorporated 1867.

No. 1168.] BALTIMORE, *May 24th*, 1870.

Marks.
× Q.

EXPENSES.
Storage 25c. per mo.....
Labor.....
Cooperage .....
Gauging .....
Weighing .....
Elevator .....
Commission .....
Advances .....

Received by the Baltimore Warehouse Company, in store at No. 2 tobacco-warehouse, from Hough, Clendening & Co., one hundred & nine bales cotton, to be delivered according to the endorsement hereon, but only on the surrender and cancellation of this receipt, and on the payment of the charges payable thereon.

{ BALT'O. WAREHOUSE CO. SEAL. } JAMES HOOPER, *President.*
JAMES B. EDWARDS, *Secretary and Registrar.*

Act of incorporation, passed 1867.

SECTION 10. The receipts, warrants, or warehouse certificates issued by this corporation shall in all cases be signed by the president or vice-president and secretary of the corporation, and attested by the corporate seal, and may be transferred by endorsement thereof, and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares, and merchandise therein specified, so far as to give validity to any pledge, lien, or transfer made or created by such person or persons; but no property shall be delivered except on surrender and cancellation of said original receipt, warrant, or certificate.

48 1168.

Copy.] BALTIMORE, 18 .

Deliver to the order of the within-described merchandise.

(S'g'n'd) HOUGH, CLENDENING & CO.

Witness:

49 viz:

Hough, Clendening & Co.,	cotton	$52,863
Hawkins, Williamson & Co.,	do	26,861 16
Elliott Bros.	do	8,188 81
McCloud & Co.,	do	1,862 35

F. L. Brauns & Co.,	do	2,888 00
W. B. Hooper,	do	320 97
F. W. Beck & Co.,	tobacco	6,000 00
Total		98,984 29

That all of said property was destroyed by fire on the 18th of July, 1870, except that embraced as shown in the salvage statement endorsed by George B. Coale and hereto annexed marked "B;" that said last-mentioned property realized the prices mentioned in said salvage statement.

Previously to and at the time of said fire, the plaintiff held a policy, substantially in the same form as that now in suit, issued by the Associated Firemen's Insurance Company of Baltimore, in the sum of $10,000. And that the following policies in the names of other parties as assured, covering only specific portions of said property hereinafter mentioned, were in force, viz:

On the property stored by Elliott Bros. three policies of the following companies, viz, in name of Elliott Bros.:

W. H., Potomac Ins. Co. for	$14,000
W. H., Peabody " " "	3,500
W. H., Royal " " "	3,400
	$20,900

50 On the property stored by F. W. Beck & Co. policies in their name as assured in

W. H., The People's Ins. Co. for	$6,000

On that of Hough, Clendening & Co. in their name as assured:

W. H., The Hartford Ins. Co. for	$3,500
W. H., " Franklin " " "	3,500
W. H., " People's " " "	2,500
W. H., " Potomac " " "	900
W. H., " Peabody " " "	6,000
W. H., " City " " "	7,700
W. H., " Washington " "	7,300
W. H., " Atlantic (1 $3,500 & 1 for $6,000)=	9,500
W. H., " Consolidated " " "	12,100
W. H., " Home Ins. Co. of Balt'o	6,000
W. H., " Citizens " " "	1,400

That said last-mentioned policies covered 676 bales of cotton, if the two $6,000 policies of the Peabody and Atlantic were each on 110 separate bales, & 566 bales, if they both were only the same 110 bales, & that said cotton was worth at the time of the fire $78.32 per bale.

On the property stored by Hawkins, Williamson & Co. in their name as assured:

	Royal Ins. Co. for	$10,000
	Western " " "	6,500
W. H.,	Connecticut " " "	16,000
	W. H., Peabody Ins. Co. "	5,000
51	W. H., Har'ford Ins. Co. for	3,000
	W. H., Home " " of Balt'o	5,000

On the property stored by F. L. Brauns & Co. in their name as assured:

People's Ins. Co. for	$2,888

It is also admitted that the plaintiff had advanced to the owners of said property, on the deposit thereof, the sums hereinafter named, & that it held the said property as security therefor, viz:

To Hough, Clendening & Co	$48,720
" Hawkins, Williamson & Co	16,800
" McCloud & Co	1,480
" F. W. Beck & Co	4,234
	$71,234

It is further admitted that all of the before-mentioned policies marked "W. H." were made payable on their face to the plaintiff in these words: "Loss, if any, payable to the Balt'o. Warehouse Co.," and delivered to and held by it as additional security for advances at the time of the making of said advances.

It is understood that this agreement is not to be construed as precluding the right of either party to produce in evidence any of the documents hereinbefore referred to, & in case of such production, the same shall be the best evidence of the tenor thereof.

WALLIS & THOMAS,
Attys. for Pltff.

52

TH. DONALDSON,
A. W. MACHEN,
For Deft.

Exhibit B referred to in the foregoing agreement is as follows, to wit:

53 *Statement of bales of cotton stored at the Balto. Warehouse Co.'s warehouse N. 2, O'Donnell's wharf, and adjustment & apportionment of salvage & expenses from the fire on July 18th, 1870, as per accounts & vouchers as stated by that company, and handed to me by the com'it'ee, R. H. Snowden, chairman.*

Name of depositor.	Number of bales in warehouse.	Number of bales identified.	Number of bales missing and not identified.	Expenses on identified cotton pr. bale, 3.96.	Expenses on missing or not identified cotton, pr. bale, 6.225.	Total expenses.	Cash realized at auction for identified less exp. as per statement of auctioneer.	Amount of salvage due each depositor, pr. bale, $14.39.	Net cash due each depositor for salvage and and sale at auction. less total expenses.
Hawkins, Williamson & Co.	328	8	320	31 71	1,991 86	2,023 57	498 98	4,606 22	3,081 63
J. Hanley Smith & Co.	97	58	39	229 88	242 76	472 64	2,493 82	561 38	2,582 56
J. Newton Lewis & Co	4	2	2	7 93	12 45	20 38	130 13	28 79	138 54
Mercer & Johnson	13	9	4	35 67	24 90	60 57		57 58	
A. D. McLeod & Co.	21		21		130 72	130 72		302 28	171 56
Hough, Clendening & Co.	675	75	600	297 25	3,734 75	4,032	4,823 35	8,636 63	9,427 98
W. B. Hooper	3	3		11 89		11 89	152 83		140 94
F. L. Brauns & Co.	35		35		217 86	217 86		503 80	285 94
Elliott Bros	111	65	46	257 62	286 32	543 95		662 14	118 19
J. E. Middleton	12	5	7	19 81	43 57	63 38		100 76	37 38
Dunn, Todd & Co	148	64	84	253 65	522 87	776 52		1,209 13	432 61
Nelson & Selby	5		5		31 12	31 12		71 97	40 85
	1,452	289	1,163	1,145 41	7,239 19	8,384 60	8,099 11	16,740 68	16,458 18
		Total number of bales.		Total amt. of expenses					
Beck, tobacco						75	52 34		
bark						25			
						8,484 60	8,151 45		
							Total amt. realized net by auction sale.		

Net cash received by Higgins, Cobb & Co., $24,892.13

Higgins, Cobb & Co. paid to Balto Warehouse Co.		12,000
" " have on hand		12,892 13
		24,892 13
Distribution of cash:		
Amt. to be paid for salvage		16,458 18
" " expenses Wareh. Co.		8,409 32
" to be paid for bills presented to committee		74 88
		24,942 78
Mercer & Johnson pay	2.99	
Beck, tobacco	22.66	
bark	25	
		50 65
		24,892 13

54 (The certificate endorsed is:) BALTIMORE, *Sept.* 30, 1870. The enclosed account presents the distribution of the bills & vouchers for expenditure furnished by the Balto. Warehouse Co., and the distribution of the salvage according to said bills & vouchers, made up under instructions from the committee appointed by the underwriters to superintend the distribution of the salvage.

GEO. B. COALE, *of the Committee.*

55

56 The plaintiff also offered in evidence the acts of the general assembly of Maryland incorporating the defendant, act 1867, ch. 268, and a supplement thereto, 1870, ch. 125, which are as follows:

An act to incorporate the Baltimore Warehouse Company, passed at January session, 1867.

SECTION 1. Thomas Kensett, William E. Hooper, Samuel M. Shoemaker, J. Wesley Guest, and George M. Bokee, and their associates, and all other persons who may hereafter be holders of the stock hereinafter mentioned, are hereby constituted a body politic and corporate, by the name of "The Baltimore Warehouse Company," for the purpose of owning, leasing, holding, erecting, and maintaining docks, bulkheads, piers, basins, and warehouses, and for carrying on the business of warehousemen and forwarders within the limits of the port of Baltimore. The corporation hereby created shall exist for twenty-five years, with power to sue and be sued, to make and use a common seal, and alter the same at pleasure.

57 SEC. 2. The corporation hereby created, in and by their corporate name, shall have power in and about the prosecution of their aforesaid business, to hold and acquire any real or leasehold estate, or personal property; and the same from time to time to sell, assign, transfer, convey, or otherwise dispose of; but this corporation is hereby expressly prohibited from buying or selling any goods, wares, or merchandise, or other property, as dealers or on commission, and from engaging in the business of forwarding goods, wares, and merchandise, or other property, from port to port, or from place to place.

SEC. 3. The said corporation is hereby authorized to receive and collect the usual and customary rates of dockage, wharfage, storage, and lighterage, for the use of their docks, quays, wharves, and warehouses, and the machinery or elevators therewith connected, or the lighters by them employed, together with all charges and expenses incurred for labor, or otherwise, in the receipt, delivery, or custody of merchandise received by or stored with them, with interest and commissions at the usual and customary rate; all of which charges, expenses, advances, interest, and commissions, as above specified, shall be a lien on said merchandise; and in case the same shall be in arrears and unpaid, or the goods be unclaimed for one year, the said goods, or so much thereof as may be sufficient to satisfy the amount due thereon, may be sold at public auction, thirty days' public notice of the time and place of such
58 sale being given by publication in at least three of the daily newspapers printed in the city of Baltimore.

SEC. 4. The capital stock of said corporation shall consist of three hundred thousand dollars, divided into fifteen thousand shares of twenty dollars each, which shall be deemed personal property, and be transferable as such in the manner the by-laws may prescribe; and the same may be hereafter increased, in case a majority of the trustees, for the time being, so determine, to an amount not exceeding one million of dollars. The said corporation may commence business, and shall be deemed fully organized, when the sum of one hundred thousand dollars toward the capital stock shall have been subscribed for, and the whole amount of such subscription paid in, in cash.

SEC. 5. The affairs, concerns, and business of the corporation hereby created shall be managed and conducted by and under the direction of

seven trustees, who shall respectively be stockholders, and who shall, in the first instance, be elected to serve one year, at a general meeting of the stockholders of this corporation, which the persons named in the first section of this act are authorized to call as soon as the sum of one hundred thousand dollars shall be subscribed, as provided in the preceding section; and thereafter the said trustees shall be elected annually, at such time and in such manner as the by-laws of the corporation may prescribe.

SEC. 6. The persons chosen as hereinbefore specified shall have
59 power to make all such by-laws, not inconsistent with the laws of this State or of the United States, as they may deem necessary for the conduct and management of the business and affairs of the corporation, the holding of elections, the transfer of stock and of subscriptions thereto; which by-laws, from time to time, may be amended, added to, or altered by the trustees for the time being. A majority of said trustees shall constitute a quorum for the transaction of business, and shall have power to appoint and remove at pleasure all officers, clerks, or servants necessary or requisite to carry on the business of said corporation, and to fill any vacancies in their number occasioned by death, resignation, or otherwise.

SEC. 7. Thomas Kensett, William E. Hooper, Saml. M. Shoemaker, J. Wesley Guest, and George M. Bokee are hereby appointed commissioners to receive subscriptions to the capital stock of this corporation, at such time and place as they may appoint by giving one week's notice thereof by publication in two daily papers published in the city of Baltimore, and said subscriptions shall be payable at such time and in such manner and instalments as the said commissioners may determine; and in case of default, the corporation may enforce the payment of such subscription by action, or the stock, with all payments that have been made thereon, shall be forfeited to the use of said corporation.

SEC. 8. The stockholders of such corporation shall be jointly and
60 severally individually liable for all debts that may be due and owing to all the laborers and servants of such corporation for services performed for such corporation, but no action or proceeding shall be brought or maintained against any stockholder for any such debt until the same shall have been due and unpaid for the space of thirty days.

SEC. 9. Each and every stockholder shall be individually liable to the creditors of said corporation to an amount equal to the amount of stock held by him, until he shall have paid in full the amount of such stock so held; but no stockholder shall be personally liable for the payment of any debt contracted by such corporation which is not payable within one year from the time when the debt was contracted, unless a suit for the collection of such debt shall be brought against said corporation within two years after the debt shall become due, and no suit shall be brought against any stockholder in said corporation until an execution against the corporation shall have been returned unsatisfied in whole or in part. No person holding stock in such corporation as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of said corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in
61 like manner and to the same extent as the testator or intestate, or the ward or person interested in such funds would have

been if he had been living or competent to act, and held the stock in his own name. Every such executor, administrator, guardian, or trustee shall represent the shares of stock owned by him as such at all meetings, and may vote as a stockholder; and every person pledging his stock as aforesaid may, in like manner, represent the same and vote accordingly.

SEC. 10. The receipts, warrants, or warehouse certificates issued by this corporation for goods, wares, and merchandise in their possession or under their control shall, in all cases, be signed by the president or vice-president and secretary of the corporation, and attested by the corporate seal, and copies thereof shall be registered in two books kept for that purpose, one of which books shall be kept by each of the officers whose signatures are to be affixed as aforesaid, which books shall be at all times open for the inspection of dealers with said corporation. The said receipts, warrants, or certificates may be transferred by endorsement thereof, and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares, and merchandise therein specified, so far as to give validity to any pledge, lien, or transfer made or created by such person or persons; but no property shall be delivered except on surrender and cancellation of said original receipt, warrant, or certificate. Every such receipt, warrant, or warehouse certificate shall contain on its face a notice that the property men-
62 tioned therein is held by this corporation as bailees only, and is not insured by this corporation.

SEC. 11. If any officer, clerk, or servant, or other person in the employment of said corporation, shall take, embezzle, or convert to his own use, or make away with, or secrete with intent to take, embezzle, or convert to his own use, any property, goods, wares, or merchandise delivered to said corporation, or in or under their possession, custody, or control, or shall, with intent to defraud the said corporation or any other person or persons, issue or cause or suffer or in any way or manner procure to be issued, any receipt, warrant, or warehouse certificate for any property, goods, wares, or merchandise not actually delivered to, or in or under the possession, custody, or control of said corporation, or shall, with like intent, issue or cause or suffer or in any manner procure to be issued, any receipt, warrant, or warehouse certificate as aforesaid for any property, goods, wares, and merchandise in the custody, possession, or control of said corporation, except on the cancellation and surrender of the original receipt, warrant, or warehouse certificate issued therefor, he shall, upon conviction, be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled, converted, made away with, or secreted, or mentioned or described in the said receipts, warrants, or certificates.

SEC. 12. This act shall take effect upon its passage.

63 The act of 1870, chap. 268, amending the act of 1867, chap. 268, incorporating the Baltimore Warehouse Company.

An act to amend the act of January session, eighteen hundred and sixty-seven, chapter two hundred and sixty-eight, entitled "An act to incorporate the Baltimore Warehouse Company," passed at January session, 1870.

SECTION 1. Be it enactad by the general assembly of Maryland, That the third section of the act of January session, eighteen hundred and sixty-seven, chapter two hundred and sixty-eight, entitled "An act to incorporate the Baltimore Warehouse Company," be so amended that the same shall read and be as follows: "The said corporation is hereby au-

thorized to charge, receive, and collect the usual and customary rates of dockage, wharfage, storage, and lighterage for the use of their docks, quays, wharves, and warehouses, and the machinery or elevators therewith connected, or for the use of the lighters, or other means of transportation by it employed; and is also authorized to charge, receive, and collect all other charges and expenses incurred, or to be incurred, for labor or otherwise, in the receipt, delivery, storage, keeping, or custody of goods, wares, merchandise, or other property received by or
64 stored with it; and is also authorized to make advances upon all goods, wares, merchandise, or other property which may be received by or stored with it, or upon any bill of lading, storekeeper's or inspector's certificate, order for the delivery of goods, or other document, showing possession, or the right thereto, upon such terms as may be lawfully agreed upon by the citizens of this State, other than corporations engaged in any similar business; and it is also authorized to charge such commissions and interest, and to make such other charges as are usual and customary; and it is hereby enacted that all of such charges, expenses, advances, and commissions, and interest shall be a lien on the said goods, wares, merchandise, bills of lading, store-keeper's or inspector's certificate, order for the delivery of goods, or other documents shewing possession or the right thereto, or other property, belonging to the party or parties by whom said charges, expenses, advances, and commissions and interest are due, or accruing, which may be in the custody or possession of the Baltimore Warehouse Company, or to which the said Baltimore Warehouse Company may have the right of possession; and if the said charges, expenses, advances, commissions, and interest, or any of them, or part of any of them, shall remain unpaid when the same are or is payable, or if there has been any breach of any of the terms of any agreement made in relation to advances or in relation to any of the particulars hereinbefore referred to, the said goods, wares, merchandise, or other property in possession of said Baltimore
65 Warehouse Company, either in fact or by virtue of documents as aforesaid, showing possession or the right thereto, and upon which the said charges, expenses, advances, commissions, and interest, or any part of them or either of them, may be *an* lien as aforesaid, or so much thereof as may be sufficient to satisfy the said amount of said charges, advances, expenses, commissions, and interest, may be sold at public auction, in one or more lots or parcels, on one or more days; and thirty days' notice of the time and place of such sale or sales shall be given in at least three of the daily newspapers printed in the city of Baltimore, except in cases where said sale or sales, having been once advertised, has or have been deferred, in which case or cases notice shall be given of such deferred sale or sales twice a week, in three daily papers as aforesaid, until the day or days of sale, and on said day of sale; and after making such sale or sales, and receiving the proceeds thereof, the said Baltimore Warehouse Company, after satisfying the amount of its claim or claims as aforesaid, and all expenses of said sale or sales, may retain the balance until the whole account between the parties is closed; or, if the same can then be closed, then shall forthwith close the same, and after satisfying all its claims as aforesaid, shall pay over the balance, if any, to the party or parties entitled to receive the same."

SEC. 2. Be it further enacted, That the tenth section of the act
66 of which this act is amendatory shall be, and is hereby, so amended that it shall only be necessary for said Baltimore Warehouse Company to register the copies of the receipts, warrants, or warehouse certificates therein referred to, in one book, which said book shall

be kept in the custody of the secretary for the time being of the said company, and shall be open at all times to the inspection of those dealing with the said company.

SEC. 3. Be it further enacted, That this act shall take effect from its passage.

BY-LAWS.

ARTICLE 1. The principal office of the company shall be in the city of Baltimore, Maryland, where the books of the company shall be kept.

ARTICLE 2. The annual meeting of the stockholders for the election of seven trustees, to serve for the ensuing year, shall be held in the city of Baltimore, on the first Wednesday in April of each year, between the hours of 12 o'clock noon and 2 p. m., of which due notice shall be given by publication in three of the daily newspapers published in the city of Baltimore. Each stockholder shall be entitled to one vote for each share of stock held by him. In the event of a failure to hold an election for trustees at any annual meeting, the existing board shall con-
67 tinue in office until an election can be had, which election must take place in two weeks from that date; the same notice to be given by the secretary as in first instance.

Special meetings of the stockholders shall be held at the office of the company when called by the board of trustees or a number of stockholders owning one thousand shares of stock. Six days' notice of such call shall be given by the secretary, by publication in three of the daily newspapers of Baltimore.

ARTICLE 3. The trustees shall meet at the office of the company the day after their election, and elect a president. They shall also elect a secretary, and appoint an executive committee. They shall have power to appoint all other officers and agents of the company, and to fix the compensation and define the duties of all their officers and agents.

ARTICLE 4. Stated meetings of the board of trustees shall be held at the company's office on the first Thursday of each month.

Special meetings may be called at any time by the president or secretary, or by two members of the board. At all meetings of the board of trustees four members, including the president, shall constitute a quorum for the transaction of business.

68 ARTICLE 5. The president, when present, shall preside at all meetings of the board, and shall exercise a general supervision of the affairs and property of the company. He shall be ex officio a member of all committees. He shall (in connection with the secretary) sign all certificates of stock, all warehouse receipts, and all other obligations of the company, and shall have custody of all deeds, leases, contracts, and securities belonging to this corporation.

ARTICLE 6. The vice-president, or president pro tempore, shall perform all the duties of the president in the absence of that officer.

ARTICLE 7. The secretary shall attend at the office of the company daily, during business hours. He shall keep a stock-ledger, and such other proper books of accounts as may be necessary. He shall keep the minutes of the board of trustees, and under direction of the president shall be the general agent of the company. He shall attend to the receiving, safe-keeping, and delivery of all property entrusted to the care of this corporation, to the collection of bills for storage, wharfage, and other earnings of the company, and shall deposit all moneys received in such place or places as may be designated by the board of trustees, to the credit of the company, and shall disburse the
69 same by check signed by himself and the president or vice-president, under the direction of the board of trustees. He shall, in

connection with the president, sign all warehouse receipts and other obligations of the company, and cause the same to be stamped with the corporate seal, and all receipts for merchandise to be registered and countersigned by his clerk. He shall, on request, submit his books and accounts to an auditing committee for inspection.

ARTICLE 8. All officers, clerks, and employees of the company shall give such bonds for the faithful performance of duty as the board may direct; and all officers and committees shall be subject to the direction of the board of trustees.

ARTICLE 9. All certificates of stock shall be signed by the president and secretary, and stamped with the seal of the company. Transfers of stock shall be made in a transfer-book in the presence of the president or secretary, either in person or by attorney, upon the surrender of the original certificate; but the company reserves to itself the privilege of refusing to transfer the stock of any parties who may be in debt to the corporation. The transfer-books of the company shall be closed
70 six days previous to the annual election of the board of trustees.

ARTICLE 10. The executive committee shall have a general supervision of all matters connected with the monetary affairs of the company, the investment of its funds and securities, and changing the same, and shall lay before the board at each monthly meeting a statement of the extent and kind of investments, and the changes made therein since the last meeting. They shall also fix the rates of storage, wharfage, and other estimated expenses on goods stored, rates of commissions, value of goods on which advances are asked, and amount to be advanced on different classes of merchandise, margins required, and time for which loans may be made. It shall also decide upon claims which may arise from damage by handling, and upon the merchantable condition of all goods received or delivered by the company.

This committee shall consist of two members, to be appointed by the board of trustees, and shall serve for six months, and alternate with other members of the board of trustees. It shall meet once a week, at 12 o'clock noon, and also be subject to the call of the president or secretary.

ARTICLE 11. The order of business at the regular board of trustees' meeting shall be as follows:

1. Reading the minutes of the preceding meeting.
71 2. Officers' reports.
3. Report of standing committees.
4. Report of special committees.
5. Unfinished business.
6. New business.

ARTICLE 12. No alteration shall be made in these by-laws except at a regular meeting of the board of trustees, and then only when notice of the proposed alteration has been given at a previous monthly meeting of the board.

CHAPTER 54.

An act to amend the third section of the act of January session, eighteen hundred and sixty-seven, chapter two hundred and sixty-eight, entitled "An act to incorporate the Baltimore Warehouse Company," as amended by the first section of the act of January session, eighteen hundred and seventy, chapter one hundred and twenty-five, entitled "An act to amend the act of January session, eighteen hundred and sixty-seven, chapter two hundred and sixty-eight, entitled 'An act to incorporate the Baltimore Warehouse Company.'"

SECTION 1. Be it enacted by the general assembly of Maryland, That

the third section of the act of January session, eighteen hundred and sixty-seven, chapter two hundred and sixty-eight, entitled "An
72 act to incorporate the Baltimore Warehouse Company," as amended by the first section of the act of January session, eighteen hundred and seventy, chapter one hundred and twenty-five, entitled "An act to amend the act of January session, eighteen hundred and sixty-seven, chapter two hundred and sixty-eight, entitled 'An act to incorporate the Baltimore Warehouse Company,'" be and the same is hereby amended and re-enacted so that the same shall read as follows:

3. The said corporation is hereby authorized to charge, receive, and collect the usual and customary rates of dockage, wharfage, storage, and lighterage for the use of their docks, quays, wharves, and warehouses, and the machinery or elevators therewith connected, or for the use of the lighters or other means of transportation by it employed; and is also authorized to charge, receive, and collect all other charges and expenses incurred or to be incurred for labor or otherwise, in the receipt, delivery, storage, keeping, or custody of goods, wares, merchandise, or other property received by it or stored with it; and is also authorized to make loans or advances upon all goods, wares, merchandise, or other property of any description whatsoever which may be received by it or stored with it, or upon any bill of lading, storekeeper's or inspector's certificates, order for the delivery of goods, or other document showing possession or the right thereto, or upon any evidence of debt, stock, or negotiable paper, or to purchase and sell the same upon such terms as may be lawfully agreed upon by the citizens of this
73 State other than corporations engaged in any similar business; and it is also authorized to charge such commissions and interest and to make such other charges as are usual and customary, and it is hereby enacted that all such charges, expenses, advances, and commissions and interest shall be a lien on said goods, wares, merchandise, bill of lading, storekeepers' or inspectors' certificates, order for the delivery of goods, or other documents showing possession, or the right thereto, or evidences of debt, stock, negotiable paper, or other property, or upon any goods, wares, merchandise, bill of lading, storekeepers' or inspectors' certificates, order for the delivery of goods, or other documents shewing possession, or the right thereto, or evidences of debt, stock, or other property as aforesaid, belonging to the party or parties by or from whom said charges, expenses, loans, advances, commissions, and interest are due or accruing which may be in the custody or possession of the Baltimore Warehouse Company or to which the said Baltimore Warehouse Company may have the right of possession; and if the said charges, expenses, advances, loans, commissions, and interest, or any of them, or part of any of them, shall remain unpaid when the same are or is payable, or if there has been any breach of any of the terms of any agreement made in relation to such advances or loans, or in relation to any of the particulars hereinbefore referred to, the said goods, wares, merchandise, evidences of debt, stocks, or other property in pos-
74 session of said Baltimore Warehouse Company, either in fact or by virtue of documents as aforesaid, showing possession or the right thereto, and upon which the said charges, expenses, advances, loans, commissions, and interest, or any part of them, or either of them, may be a lien as aforesaid, or so much thereof as may be sufficient to satisfy the said amount of said charges, advances, expenses, commissions, and interest may be sold for cash, at public auction, in one or more lots or parcels, on one or more days, or may be sold in such manner and upon such terms as may have been agreed upon in writing be-

tween the parties; but in the absence of any agreement in relation to notice of the time and place of such sale or sales, thirty days' notice of the time and place of such sale or sales shall be given in at least three of the daily newspapers printed in the city of Baltimore, except in cases where said sale or sales, having been once advertised, has or have been deferred, in which case or cases notice shall be given of such deferred sale or sales at least twice for one week in three daily papers as aforesaid, until the day or days of sale, and on said day of sale, and after making such sale or sales, in the manner and upon the terms agreed upon between the parties, or as prescribed by this section, and after receiving the proceeds of such sale or sales, the said Baltimore Warehouse Company, after satisfying the amount of its claim or claims, as aforesaid, and all expenses of said sale or sales, may retain the
75 balance until the whole account between the parties is closed, or if the same can then be closed, then shall forthwith close the same, and after satisfying all its claims as aforesaid, shall pay over the balance, if any, to the party or parties entitled to receive the same, and it shall be lawful for the parties contracting as aforesaid to agree that at any sale made at public auction or any place of open market, agreed upon between the parties for the making of such sale, the said Baltimore Warehouse Company may become the purchaser of the property so sold.

SEC. 2. And be it enacted, That this act shall take effect from the date of its passage.

JAMES HOOPER was then called by the plaintiff, who testified as follows:

At the time of the fire, and before the same, and for some time thereafter, I was the president of the Baltimore Warehouse Company; that George B. Coale, who was then & still is the agent of defendant, was not in the city at the time of the fire. I saw him first several days afterwards at said Coale's office. When the receipt endorsed upon the policy was signed by Mr. Coale on the 10th day of October, 1870, he wished me to surrender the policy, but I refused to do it, saying there might be some other claim, as some of the special insurers were taking the ground that the Home and associated companies' policys were liable to contribute with them, and that I wanted his policy to cover any loss that
76 might turn up, although now unforseen. Mr. Coale denied that the defendant was liable for any other loss than that embraced in the receipt, but then, at my instance, altered the printed form of receipt, which was a receipt in full for all losses under the policy, & I signed it in the present form. I made no final settlement with him. Afterwards, I called on him several times for the agreement extending the time within which suit might be brought, the object being to extend until the decision of questions involved in cases then pending against other underwriters, of which that against Hough, Clendenin & Co. was on'. I so told Coale, and he said he would write on to his principals in New York. He informed me that he did so, and afterward signed the agreement. He did not refuse to sign it; he contended that we had no other claim upon him, because the other policies were special insurances. But I was careful to notify him that if any other claim should arise, I should make it. I made a claim for 110 bales, if not covered by the policies of the Atlantic & Peabody. I made claim for any loss that was not covered by other policies. I never heard him mention deficiency of preliminary proof, bills for expenses, &c., when the goods saved were submitted to a committee, of which Coale was a member, & approved. Mr. Coale did not take any part in the conduct of the suit of Hough, Clendening & Com-

pany for the use of The Baltimore Warehouse Company against
77 The People's Insurance Company. He attended as a witness; did nothing more to my knowledge. We took special policies from depositors when we made advances. I don't know that we had any mode of connecting the special policies with the numbers of the certificates or receipts. There were a good many receipts for small lots, and one policy might cover an amount of cotton embraced in several receipts. We always kept a blanket policy to cover anything that might not be covered by the special policies.

The plaintiff produced and offered in evidence the following policy of insurance issued by the Peabody Insurance Company:

No. 4945.] [$6,000.

THE PEABODY FIRE INSURANCE COMPANY OF THE CITY OF BALTIMORE.

[10-c. stamp.]

By this policy of insurance The Peabody Fire Insurance Company of Baltimore, in consideration of nine dollars to them paid by the insured, hereinafter named, the receipt whereof is hereby acknowledged, do insure Hough, Clendening & Co. against loss or damage by fire to the amount of six thousand dollars, on 110 bales of cotton, their own or held by them in trust or on commission, or sold but not delivered, stored in tobacco warehouse No. 2, O'Donnell's wharf, now occupied by the Baltimore Warehouse Company.

Loss, if any, payable to the Baltimore Warehouse Co. Other insur-
surance permitted without notice until required. And the said
78 company do hereby promise and agree to make good unto the said insured, their executors, administrators, and assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, during two months, to wit, from the twenty-fourth day of May, one thousand eight hundred and seventy, (at 12 o'clock at noon,) until the twenty-fourth day of July, one thousand eight hundred and seventy, (at 12 o'clock at noon,) the said loss or damage to be estimated according to the actual cash value of the said property, at the time the same shall happen; and to be paid within ninety days after due notice and proof thereof, made by the insured in conformity to the conditions annexed to this policy, unless the property be replaced, or the company has given notice of its intention to rebuild or repair the damaged premises: Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power: And provided further, that if any other insurance has been or shall hereafter be made upon the said property, not consented to by this company in writing hereon, or if the said property shall be sold or conveyed, or if this policy shall be assigned without the consent of the company, obtained in writing hereon, or if the assured shall make any attempt to defraud the company, then, and in every such case, this policy shall be null and void. In case of loss the insured shall not recover on
79 this policy any greater proportion of the loss or damage sustained to the subject insured than the amount hereby insured shall bear to the whole amount insured on the said property. And if the above-mentioned warehouse at any time during the period for which this policy would otherwise continue in force shall be used for the purpose of carrying on therein any trade or occupation, or for storing or keeping therein

any articles, goods, or merchandise denominated hazardous, or extra hazardous, or specially hazardous, in the conditions of insurance annexed to this policy, except as herein specially provided for, or hereafter agreed to by this corporation, in writing, upon this policy, from thenceforth, so long as the same shall be so used, this policy shall be of no force or effect. And it is moreover declared, that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to property; nor to bonds, bills, notes, or other evidences of debt; nor to money or bullion; and that casts, curiosities, engravings, jewelry, jewels, medals, models, musical and scientific instruments, (pianofortes in dwelling-houses excepted,) paintings, patterns, plate, precious stones, printed music, prints, sculpture, statuary, and watches are not deemed to be included in any insurance, unless particularly specified in writing in the policy.

☞Whenever gunpowder, or any other article subject to legal restriction, shall be kept in said premises in quantities greater than the law allows, or in a manner different from that prescribed by law,
80 unless said use or keeping is specially provided for herein, this policy shall be null and void.

☞If steam-power be used in or about said premises, and the boiler burst, or if any property hereby insured be struck by lightning, or damaged by explosion from any cause whatever, this company shall not be liable unless fire ensues, and then for the loss by fire only.

☞This policy is made and accepted in reference to the terms and conditions herein contained, and hereto annexed, which are hereby declared to be a part of this contract.

CONDITIONS OF INSURANCE.

1. Persons desirous of making insurance on buildings are to furnish the secretary of the company with the following information:

1. Of what materials the wall and roof of each building are constructed, as well as the construction of the buildings contiguous thereto.

2. Whether the same are occupied as private dwellings, or how otherwise.

3. Where situate.

Each building must be separately insured, and in like manner a separate sum insured on the property contained therein. In the insurance of goods, wares, or merchandise, the building or place in which the same are deposited is to be described; also whether such goods are of the kinds denominated hazardous, and whether any manufactory is carried on in the premises. If any person insuring any building or goods in this office shall make any misrepresentation or concealment; or
81 if after insurance is effected, either by original policy or by the renewal thereof, the risk shall be increased by any means whatever, within the control of the assured; or if such building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void and of no effect.

If during the insurance the risk is increased by the erection of buildings, or by the use or occupation of neighboring premises, or otherwise; or if at any time the company shall so elect, it shall be optional with the company to terminate the insurance, after notice given to the assured, or his representative, of their intention to do so; in which case the company will refund a ratable proportion of the premium.

2. Property held in trust or on commission must be insured as such, otherwise the policy will not cover such propeaty; and in case of loss

the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interest therein.

Goods on storage must be separately and specifically insured. If the interest in property to be insured be a leasehold interest, or other interest not absolute, it must be so represented to the company and expressed in the policy in writing, or otherwise the insurance shall be void.

NOTE.—By "property held in trust" is intended, property held under a deed of trust, or under the appointment of a court of law, or property held as collateral security; in which latter case, this company shall
82 be liable only to the extent of the interest of the assured in such property.

3. Policies of insurance subscribed by this company shall not be assignable without the consent of the company expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy or of any interest in it, the liability of the company in virtue of such policy shall thenceforth cease; and the company reserves to itself the right to elect, either to consent to the transfer, or return a ratable proportion of the premium, and cancel the policy.

In case of claim for loss or damage on a policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the assured in conformity with the conditions of this policy, in like manner as if no assignment had been made; otherwise this policy shall be void and of no force or effect whatever, and all liability on the part of this company shall cease. This company will not be responsible for goods stolen.

4. All persons having property insured by this company must, with reasonable diligence, give notice of all additional insurances made in their behalf on the same, whether by this company or by other insurers; and of all changes that may be made in such additional insurances; and cause such notice to be endorsed on their policies; and each company shall be liable to the payment only of a ratable proportion of any loss or damage which may be sustained; and unless such notice is
83 given, the insured will not be entitled to recover in case of loss.

5. No order for insurance will be of any force unless the premium be first paid to the secretary of the company; and all persons desirous of continuing their insurances, may do so by a timely payment of the premium only, without being subject to any charge for the policy.

6. In case of fire, or of loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property. And it is mutually understood that there can be no abandonment to the insurers of the subject insured.

7. Persons sustaining loss or damage by fire shall forthwith give notice thereof in writing to the company, and, as soon after as possible, they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just, showing, also, whether any and what other insurance has been made on the same property, giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, so far as
84 they know or believe. They shall also produce a certificate, under

the hand and seal of a magistrate, notary public, or commissioner of deeds, most contiguous to the place of the fire, and not concerned in the loss, stating that he has examined the circumstances attending the fire, loss, or damage alleged, and that he is acquainted with the character and circumstances of the insured or claimant; and that he verily believes that he, she, or they have by misfortune, and without fraud or evil practice, sustained loss and damage and on the subject insured to the amount which such magistrate, notary public, or commissioner of deeds shall certify.

When merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods; and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The amount of damage shall then be ascertained by the examination and appraisal of each article by disinterested appraisers, mutually agreed upon; and, whenever required in writing, the insured, or person claiming, shall produce and exhibit his books of account, and other vouchers, to the insurers, or their agent, at the office of this company, in support of his claim, and permit extracts and copies thereof to be made; and shall also exhibit to any persons named by the company, and shall permit to be examined by them, any property damaged, on which any loss is claimed, or any property
85 saved which was insured by this policy. And until such proofs, declarations, and certificates are produced, and such appraisals and examinations of property permitted by the claimant, the loss shall not be payable.

All fraud or false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurer on this policy.

8. In case of any loss on or damage to the property insured it shall be optional with the company to replace the articles lost, or damaged, with others of the same kind and quality, and to rebu ld or to repair the building or buldings within a reasonable time—giving notice of their intention to do so within twenty days after having received the preliminary proofs of loss required by the seventh article of these conditions. In case differences shall arise concerning the amount of any loss or damage by fire, the matter shall, at the written request of either party, be submitted to the judgment of arbitrators, indifferently chosen, whose award, in writing, as to the amount of such loss and damage, shall be binding on the parties.

9. The insurance by this policy shall cease from the time that the property hereby insured shall be levied on, or taken into possession or custody, under an execution or other proceedings at law or equity. In case of sale of the property insured, or cessation of the risk, a return of the premium will be made, if applied for within thirty days after such an event, but not otherwise—subject to a deduction of five per cent.;
86 but no return of premium will be made for a less term than one year.

10. The following, being considered hazardous risks, will subject the assured to a higher rate of premium; those, therefore, desirous of having the liberty of using their premises for such purposes, must have the same inserted in their policies, which otherwise will be void.

SECTION 1.

Merchandise generally.—Hazardous.

WHOLESALE.—China, glass, and crate ware, in packages; corn and grain; flax and hemp, in bales; drugs and medicines, in packages; naval stores, in packages, viz, oil, paints, pitch, rosin, sulphur, tar, tallow, turpentine, varnish, spirits, wines, and groceries, in packages.

RETAIL.—Apothecaries; booksellers; china and glass ware, opened; curriers, and dealers in oil and tallow; grocers; gunpowder; gold and silversmiths; hardware; looking-glasses and pictures; oil and color men; ship-chandlery, and naval stores.

And all other articles allowed by law, and not specially excepted in sections 2 and 3.

SECTION 2.

Trades.—Extra-hazardous.

87 Bookbinders, shoemakers, carvers and gilders, coopers, hat stores, tailors, taverns and oyster cellars, printers.

SECTION 3.

Risks.—Specially hazardous.

Barns and stables and contents, breweries, bakehouses, cabinet and musical instrument makers, chemical lab'ratories, carpenters, cotton waste, chair-makers, carriage-builders, camphene and burning fluids, distilleries, dyers, glass-blowers, hay, straw, and provender; hat-manufactories, hemp and flax, loose, houses and vessels, unfinished, iron and brass, (workers in,) lumber, looking-glass and picture-frame makers, mast-makers and boat-builders, manufactories, mills, potteries, rope-makers, rags and paper-cuttings, saltpetre, steam-engines, sugar-refiners, stables, (public and private,) starch and glue factories, tallow chandlers, tanners and morocco-dressers' tools, (manufacturers of,) type-founders, turners in wood or metal, varnish and oil, (boilers of,) stores c- receiving and forwarding agents, and goods therein.

88 In witness whereof The Peabody Fire Insurance Company have caused these presents to be signed by their president and attested by their secretary, in the city of Baltimore, on this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and seventy.

THOS. J. CAREY, *President.*

Attested:

RICH'D B. POST, *Secretary.*

No. .

Payment of the premium for continuing the insurance by this policy is acknowledged to have been received, as follows:

Date of receipt.	Premium received.	Sum insured.	To expire at noon.	Signature.

89 For value received, hereby transfer, assign, and set over unto and assigns, all title and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of .

[SEAL.]

Sealed and delivered in presence of—

OFFICE OF THE PEABODY FIRE-INSURANCE COMPANY OF BALTIMORE.

Approved:

Secretary.

For value received, hereby transfer, assign, and set over unto and assigns, all title and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of .

[SEAL.]

Sealed and delivered in presence of—

OFFICE OF THE PEABODY FIRE-INSURANCE COMPANY OF BALTIMORE.

Approved:

Secretary.

For value received, hereby transfer, assign, and set over unto and assigns, all title and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of .

[SEAL.]

Sealed and delivered in presence of—

OFFICE OF THE PEABODY FIRE-INSURANCE COMPANY OF BALTIMORE.

Approved:

Secretary.

90 For value received, hereby transfer, assign, and set over unto and assigns, all title and interest in this policy, and all advantage to be derived therefrom.

Witness hand and seal this day of .

[SEAL.]

Sealed and delivered in presence of—

OFFICE OF THE PEABODY FIRE-INSURANCE COMPANY OF BALTIMORE.

Approved:

Secretary.

Policy No. 4945.

BALTIMORE, *May* 16, 1872.

Received of the Peabody Fire-Insurance Co., the sum of thirty-five hundred & eighty-three $\frac{40}{100}$ dollars, being in full for all claims of losses by fire under this policy.

$3,583.40. JAMES H. BARNEY, *Pres't.* [SEAL.]

(Indorsed:) 64. *1168. 2. *In blue pencil. Expires July 24th, 1870. No. 4945. Peabody Fire-Insurance Company of the city of Baltimore, Second street, adjoining post-office. Hough, Clendening & Co. On mdse. No. , O'Donnell's whf. Amount insured, $6,000. Premium, $9; policy stamp, 10—$9.10. R. C. Luckett, general insurance agent, office 83 Second st., Baltimore. Fire-insurance. Life-insurance.

91 (Also indorsed:) Hough, Clendening & Co., July 18, 1870. Peabody Fire-Insurance Co. of Baltimore. Office, Second st., adjoining the post-office. Directors: Galloway Cheston, Enock Pratt, Henry D. Harvey, John H. B. Latrobe, Thomas Whitridge, William Kennedy, Austin Dall, James Carey, Jesse Tyson, Peter Mowell. Thos. J. Carey, president; Rich'd B. Post, secretary.

The said James Hooper, being further examined by the plaintiff's counsel, said: The pencil-marks or memorandum on the back of the said Peabody policy (1168) was made after the fire. It was merely put on to see that the cotton was all covered. I think there were two policies for 110 bales each. There was one bale of cotton short. The pencil-mark was made by Mr. Edwards, the secretary, after the fire, with a view to proving the number of bales insured. The policies did not mention the number of any receipt.

On cross-examination the said witness further testifies: We made proof of loss, and it was paid; but no final settlement was made between the plaintiff & defendant. I did not know at that time of any other loss for which we had a claim upon the Home Insurance Company, and so could not make any; made no statement of any such other claim; but I reserved the policy, claiming that if any other loss arose I should look to the defendant, and so told Mr. Coale. Mr. Coale at that time denied that any other loss could arise or appear to
92 make his company responsible. He made serious objection to my keeping the policy, contending that there was no further claim; but I would not give it up, in order to cover anything which might be covered. I said to him that was the object of the policy, to cover anything we couldn't and didn't see at the time; that it was a blanket policy. Mr. Coale did not admit, but denied that. On many other occasions I notified Coale that I held it to cover all claims that might arise; that the defendant would be liable to that extent. I never made any claim under our general policies where there had been a special insurance.

Immediately after the fire I made claim on behalf of the Warehouse Co. upon both the Peabody and Atlantic Companies for loss of 110 bales, as against each.

On re-examination the said witness further testified: At the time of the signing of the first extension, I think I told Mr. Coale that if necessity arose from the claim made by the People's Company for contribution, we should look to the defendant.

The plaintiff then offered in evidence the following record of the case of Hough, Clendening and Company vs. The People's Insurance Company. The defendant objected to the reception of the said record, and excepted to the same as evidence in this cause; and the said record was thereupon read, subject to exception.

MARYLAND, *sct.*:

93 At a court of appeals of the State of Maryland, begun and held at the city of Annapolis, on the first Monday of April, it

being the first day of the said month, in the year of our Lord 1872, and of the Independence of the United States of America the ninety-sixth:

Present, the honorable James L. Bartol, chief judge; James A. Stewart, Oliver Miller, Richard H. Alvey, Richard Grason, George Brent, John M. Robinson, Richard J. Bowie, associate justices; James S. Franklin, clerk.

BERNARD HOUGH, WILLIAM CLENDENING, Thomas R. Clendening, use of their assignee, The Baltimore Warehouse Company,
vs.
THE PRESIDENT AND DIRECTORS OF THE People's Fire-Insurance Company of Baltimore.

Be it remembered that now here, on the first Monday in October, being the second day of the said month, in the year of our Lord one thousand eight hundred & seventy-one, the judge of the superior court, being in the eight' judicial circuit of Maryland, in pursuance of the directions of the act of assembly in such case made and provided, transmit to the court of appeals here the record of proceedings of a plea which was lately depending before him in the said superior court,
94 of Balto. City, between Bernard Hough, William Clendening, Thomas R. Clendening, use of their assignee, The Baltimore Warehouse Company, plaintiffs, and The President and Directors of the People's Fire-Insurance Company of Baltimore, defendants, and wherein the said superior court gave judgment for the said The President and Directors and Company of the People's Fire-Insurance Company of Baltimore against the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, and from which said judgment said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, appealed to the court of appeals here; the tenor of which said record of proceedings is in form following, to wit:

In the circuit court of Baltimore City.

BERNARD HOUGH, WILLIAM CLENDENING, Thomas R. Clendening, use of their assignee, The Baltimore Warehouse Company, plaintiffs,
vs.
THE PRESIDENT AND DIRECTORS OF THE People's Fire-Insurance Company of Baltimore, defendants.
} In the circuit court of Baltimore City.

Two actions between same parties consolidated by consent.

J. NEVITT STEELE,
JOHN A. INGLIS,
For Plaintiffs.

95

S. TEACKLE WALLIS,
FIELDER C. SLINGLUFF,
For Defendants.

Action commenced in the first case 12 December, 1870, and writ of summons issued returnable second Monday of December, 1870.

Declaration.—Filed 12 December, 1870.

BALTIMORE CITY, *to wit:*

In the superior court.

The plaintiffs, Bernard Hough, William Clendening, and Thomas R Clendening, partners in trade, under the style of Hough, Clendening & Co., for the use of their assignee, The Baltimore Warehouse Company, by J. Nevitt Steele and John A. Inglis, their attorneys, sue the president and directors of the People's Fire Insurance Company of Baltimore, the defendant:

For that the defendant, a corporation, under the name of The President and Directors of the People's Fire Insurance Company of Baltimore, heretofore, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy, by its certain contract in writing, sealed with the corporate seal of the defendant, and signed by its president and attested by its secretary, and duly made by the defendant, commonly called a policy of insurance, of that date, in consideration of a premium of one dollar and sixty-four cents, then in full actually paid by the plaintiffs to the defendant at its office,
96 covenanted with and promised to the plaintiffs, that if, at any time between the twenty-first day of June, in the year of our one thousand eight hundred and seventy, at twelve o'clock at noon, and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and seventy, at twelve o'clock at noon, loss or damage should happen by fire to fifteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, the defendant would make good unto the plaintiffs, their executors, administrators, and assigns, all such loss or damage, not exceeding the sum of fourteen hundred dollars, upon due notice and proof thereof made by the plaintiffs, in conformity to the conditions annexed to the said policy, and would replace the property so lost or damaged; or, upon the failure of the defendant to give notice before the expiration of thirty days after such proofs of loss received, of its intention so to replace, would, within sixty days after such notice and proof made, pay the amount of said loss or damage. And the plaintiffs say, that within the interval of time covered by the risk, which by the said contract of insurance the defendant so assumed, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy, the property so insured, to wit, fifteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, were lost and damaged by fire; that the amount of the loss and damage thereby to the plaintiffs was eleven hundred and seventy-four dollars and
97 seventy-three cents; that, afterwards, to wit, on the tenth day of August, in the year of our Lord one thousand eight hundred and seventy, notice and proof of the said loss and damage were duly made by the plaintiffs, and by them delivered at the office of the defendant, in Baltimore, and there by the defendant received, and no objection has by the defendant been made thereto; that the defendant did not, at any time within thirty days after such receipt of the said due notice and proof of the loss and damage, nor at any time heretofore, give notice of its intention to replace the said property so lost and damaged; and the said defendant has not paid the amount of said loss and damage, and although not denying nor disputing the fact or amount of the said loss and damage, as proved and adjusted, has hitherto wholly neglected and

refused, and still neglects and refuses, to pay the same, or any part thereof, but hath broken the covenant aforesaid by the defendant with the plaintiffs made.

And for that also the defendant, a corporation as aforesaid, by the name aforesaid, afterwards, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy, by its certain contract in writing of that date, commonly called a policy of insurance, duly made by the defendant, sealed with the corporate seal of the defendant, and signed by its president, and attested by its secretary in testimony of its corporate act and assent, in consideration of a premium of insurance, to wit, one dollar and sixty-four cents, then by the plaintiffs in full actually paid to the defendant, at its office, insured the plaint-
98 iffs against loss or damage by fire, to the amount of fourteen hundred dollars, on fifteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, and with the plaintiffs covenanted and promised and agreed to make good unto the plaintiffs, their executors, administrators, and assigns, all such loss or damage, not exceeding in amount the sum insured, (except such loss or damage should be caused or occasioned in some one or other of several ways, or from some one or other of several causes provided and specified in certain "conditions of insurance," incorporated into the said contract, as therein will appear,) as should happen by fire to the property in the said policy so as above specified, insured, during thirty-five days thereafter, to wit, from the twenty-first day of June, A. D. 1870, at twelve o'clock at noon, until the twenty-sixth day of July, A. D. 1870, at twelve o'clock at noon—the said loss or damage to be estimated according to the actual cash value of the said property at the time the same should happen, and would replace the said property so lost or damaged, or otherwise, if notice of its intention so to replace should not be given to the plaintiffs by the defendant within thirty days after the preliminary proof of loss made and received, as in the said condition of insurance is required, would, at the expiration of sixty days after due notice and proof thereof, pay the said loss or damage so estimated as aforesaid. And the plaintiffs in fact aver and say that after the making of the said contract, and during the said
99 interval of thirty-five days so covered by the said contract of insurance of the defendant, to wit, on the eighteenth day of July, A. D. 1870, the property so insured, to wit, fifteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, O'Donnel's wharf, then occupied by the Baltimore Warehouse Company, were wholly lost to the plaintiffs by fire, not originating from any of the causes or in any of the modes excepted from the defendant's risks, in and by the said "conditions of insurance;" that the cash value of the said cotton at the time of the loss, and the amount of the damage to the plaintiffs by the said loss was and is eleven hundred and seventy-four dollars and seventy-three cents, as ascertained and estimated as in the said conditions of insurance is prescribed; that the plaintiffs forthwith gave to the defendant due notice of the said loss, and as soon as possible thereafter, to wit, on the tenth day of August, A. D. 1870, delivered in as particular an account of the said loss and damage as the nature of the case admitted, signed with their own hands and accompanied with the oath of one of them, declaring and showing, as in said conditions of insurance is required, and also with a certificate of a magistrate most contiguous to the place of the fire, and not concerned in the loss as creditor or otherwise, nor related to the plaintiffs, as in said conditions of insurance is provided; and that the plaintiffs, when required, and so far as required, after the said loss, have

produced and exhibited their books of account and other vouchers to the defendant's agent, in support of their said claim, and permitted extracts and copies thereof to be made, and when, and so far as re-
100 quired, have submitted to examination, under oath, by the agent or attorney of the defendant, and subscribed to all such examinations when reduced to writing, and have done, and whenever thereto required, have been at all times ready to do, all and everything which, by the said conditions of insurance and the multiplied stipulations of the said contract, they ought or might be required to do in order to the ascertainment, proof, and adjustment of the plaintiffs' claim for indemnity against the loss and damage by fire of the said property so covered by the said promise and undertaking of the defendant. Yet the defendant, not denying or disputing the fact or amount of the said loss or damage, nor in any wise objecting to the said notice, proof, and adjustment delivered in by the plaintiffs, has not replaced the said property so lost, nor within said thirty days, or at any time given notice of an intention so to do, and has not paid the said amount of the said loss and damage of the plaintiffs, nor any part thereof, but the same to pay has hitherto wholly neglected and refused, and still neglects and refuses.

Wherefore the defendant hath broken its covenant with the plaintiffs last aforesaid made.

And for that also the defendant, a corporation as aforesaid, by the name aforesaid, heretofore, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy, made its certain contract in writing of that date, commonly called a policy of insurance, sealed with the corporate seal of the defendant, and by it caused, in testimony of its corporate act and assent, to be signed
101 by its president and attested by its secretary, and thereby covenanted, promised, and agreed to and with the plaintiffs, that if the plaintiffs would in full actually pay to the defendant, at its office, a certain premium of insurance, to wit, one dollar and sixty-four cents, the defendant would insure the plaintiffs against loss or damage by fire to the amount of fourteen hundred dollars, on fifteen bales of cotton, stored in tobacco-warehouse No. 2, O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, and would make good unto the plaintiffs, their executors, administrators, and assigns, all such loss or damage not exceeding in amount the sum insured as should happen to the property so as above specified as insured, during thirty-five days, to wit, from the twenty-first day of June, A. D. 1870, at twelve o'clock at noon, until the twenty-sixth (26th) day of July, A. D. 1870, at twelve o'clock at noon, by fire, not happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, nor from the use of open lights in barns or where shavings are made, nor of fires in buildings unprovided with good and substantial stone or brick chimneys, nor in consequence of any neglect of or deviation from the laws or regulations of police, nor by the explosion of gunpowder or any explosive substance, the said loss or damage not to exceed the actual cash value of the property the subject of insurance at the time of the loss, or the price paid by the plaintiffs for the same; and upon the plaintiffs giving notice forthwith of such loss or damage in writ-
102 ing to the defendant, and as soon after as possible delivering in as particular an account of the said loss or damage as the nature of the case should admit, signed with their own hands and accompanying the same with their oath or affirmation declaring the said account to be true and just, showing also whether any and what other insurance had

been made on the same property, given a copy of the written portion of the policy of each company, what was the whole cash value of the subject insured and of the plaintiffs' interest therein, in what general manner the building containing the subject insured and the several parts thereof were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, and producing a certificate under the hand and seal of a magistrate, notary public, or commissioner of deeds most contiguous to the place of the fire, and not concerned in the loss as creditor or otherwise nor related to the plaintiffs, stating that he has examined the circumstances attending the fire, loss, or damage alleged, and that he is acquainted with the character and circumstances of the plaintiffs, and that he verily believes that they have, by misfortune and without fraud or evil practice, sustained loss or damage on the subject insured to the amount which such magistrate, notary public, or commissioner of deeds may certify, and producing and exhibiting, whenever required, their books of account and other vouchers to the defendant or its agents at the office of the defendants
103 in support of that claim, and permitting extracts and copies thereof to be made, and producing certified copies of all bills or invoice, the originals of which have been lost, and submitting to an examination or examinations, under oath, by the agent or attorney of the defendant, and subscribing all the examinations when reduced to writing, and exhibiting to any persons named by the defendant and permitting such persons to examine any property damaged on which loss was claimed, and any property saved which was insured by the said policy, the defendant would replace the insured property that should be so lost or damaged; or, upon its failure to give notice within thirty days after proofs of loss have been received, of an intention so to replace, would, within sixty days after due notice and proof of the loss or damage made and received at the office of the defendant in Baltimore, pay the amount of the said loss or damage, estimated as aforesaid.

And the plaintiffs in fact say that they, the said plaintiffs, did, at the making of the said contract, actually pay in full to the defendant, at its office, the premium of insurance aforesaid, to wit, one dollar and sixty-four cents; and afterwards and during the interval of time covered by the risk of said insurance, to wit, on the eighteenth day of July, A. D. 1870, the property so insured, to wit, fifteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, were wholly lost to the plaintiffs (whatever portion thereof was not entirely destroyed
104 being taken by the defendant) by fire, not happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, nor in any of the ways in the said contract herein above stated excepted from the defendant's risk assumed in the said policy of insurance; that the actual cash value of the said insured property so lost, at the time of the loss, was eleven hundred and seventy-four dollars and seventy-three cents, and the costs to the plaintiffs not any less; that the plaintiffs thereupon gave notice in writing forthwith to the defendant of the said loss, and as soon as possible afterwards delivered in to the defendant as particular an account of the said loss as the nature of the case would admit, signed with their own hands, accompanied with the declaration, under oath, in all its particulars, and a certificate under the hand and seal of a magistrate most contiguous to the place of the fire, and not concerned in the loss, a creditor or otherwise, nor related to the plaintiffs, stating in all its particulars, as by said contract hereinabove set forth the said declara-

tions and certificate are required to be and contain; and the defendant received the said notice, proof, and adjustment so made, and waived whatever defects or insufficiencies, if any were therein; that the plaintiffs, when required, duly produced and exhibited their books of account and other vouchers, and permitted extracts and copies thereof to be made and submitted to examination and examinations under oath,
by the agent or attorney of the defendant, and subscribed the
105 same when reduced to writing, and did all other things by them
to be done, as by the contract aforesaid of the defendant was required, in order to the liability of the defendant; whereby the defendant became thereupon liable to replace or pay for the property so lost by fire as aforesaid. Yet the defendant, not denying or disputing the fact or amount of the loss and damage, nor objecting in any wise to the notice, proof, and adjustment thereof, delivered in by the plaintiff as aforesaid, has not replaced the said insured property so lost, nor within said thirty days after preliminary proof of loss received, or at any time given notice of an intention so to replace, and has not paid the said amount of the said loss and damage of the plaintiffs so sustained, as by the said contract is required, nor any part thereof, but the same to pay has hitherto wholly neglected and refused, and still neglects and refuses, and hath herein broken the said last-mentioned covenant by the defendant with the plaintiffs made.

Wherefore the plaintiffs are worse, and have damage, by reason of the said several breaches of its covenants by the defendant, two thousand dollars.

J. NEVITT STEELE
JOHN A. INGLIS,
Attornegs for the Plaintiffs.

Declaration.—Filed 7 January, 1871.

BALTIMORE CITY, *to wit:*

In the superior court.

106 The plaintiffs, Bernard Hough, William Clendening, and Thomas R. Clendening, partners in trade, under the name and style of Hough, Clendening & Co., for the use of the Baltimore Warehouse Company, by J. Nevitt Steele and John A. Inglis, their attorneys, sue the president and directors of the People's Fire Insurance Company of Baltimore, the defendant:

For that the defendant, a corporation, under the name of The President and Directors of the People's Fire Insurance Company of Baltimore, heretofore, to wit, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy, by its certain contract in writing, under its corporate seal, signed by its president and attested by its secretary, and duly made by the defendant, commonly called a policy of insurance, of that date, in consideration of a premium of one dollar and twenty-five cents, then in full actually paid by the plaintiffs to the defendant at its office, covenanted with and promised to the plaintiffs, that if at any time between the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy, at twelve o'clock at noon, and the thirty-first day of July, in the year of our Lord one thousand eight hundred and seventy, at twelve o'clock at noon, loss or damage should happen by fire to thirteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, on O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, the defendant would make

good unto the plaintiffs, their executors, administrators, and assigns, all such loss or damage, not exceeding the sum insured, upon
107 due notice, proof, and adjustment thereof, made and received at the office of the defendant, in Baltimore, and would replace the property so lost or damaged, or upon the failure of the defendant to give notice, before the expiration of thirty days after such proofs of loss received, of its intention so to replace, would, at the expiration of sixty days after such proofs received, pay the amount of said loss or damage; and the plaintiffs say, that within the interval of time covered by the risk which, by their said contract of insurance, the defendant so assumed, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy, the property so insured, to wit, thirteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, on O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, was lost and damaged by fire; that the amount of the loss and damage thereby to the plaintiffs was one thousand and eighteen dollars and ten cents; that afterwards, to wit, on the 10th day of August, in the year of our Lord one thousand eight hundred and seventy, notice, proof, and adjustment of the said loss and damage were duly made by the plaintiffs, and by them delivered at the office of the defendant, in Baltimore, and there by the defendant received, and no objection has by the defendant been made thereto; that the defendant did not, at any time within thirty days after such receipt of the said due notice, proof, and adjustment of the loss and damage, nor at any time heretofore, give notice of its intention to replace the said property so lost and
108 damaged; and the said defendant has not paid the amount of said loss and damage; and although not denying nor disputing the fact or amount of the said loss and damage, as proved and adjusted, has hitherto wholly neglected and refused, and still neglects and refuses, to pay the same or any part thereof; and so the defendant its covenant aforesaid with the plaintiffs made has broken.

And for that also the defendant, a corporation as aforesaid, by the name aforesaid, afterwards, to wit, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy, by its certain contract in writing of that date, commonly called a policy of insurance, duly made by the defendant, sealed with its corporate seal, and signed by its president, and attested by its secretary, in consideration of a premium of insurance, to wit, one dollar and twenty-five cents, then by the plaintiffs in full actually paid to the defendant, at its office, insured the plaintiffs against loss or damage by fire to the amount of eleven hundred dollars on thirteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, on O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, covenanted, promised, and agreed to and with the plaintiffs, to make good unto the plaintiffs, their executors, administrators, and assigns, all such loss or damage not exceeding in amount the sum insured, (except such loss or damage should be caused or occasioned in some one or other of several ways, or from some one or other of several causes provided and specified in certain "conditions of insurance" incorporated with the said contract,
109 as therein will appear,) as should happen by fire to the property in the said policy so as above specified insured, during thirty-four days thereafter, to wit, from the twenty-seventh day of June, A. D. 1870, at twelve o'clock at noon, until the thirty-first day of July, A. D. 1870, at twelve o'clock at noon, the said loss or damage to be estimated as in said policy is provided, according to the actual cash value of the property at the time the same shall happen, and would replace the said

property so lost or damaged, or otherwise, if notice of its intention so to replace should not be given to the plaintiffs by the defendant within thirty days after notice, proof, and adjustment made and received at the office of the defendant in Baltimore, as in the said conditions of insurance is required, would, at the expiration of sixty days after such notice and proofs, pay the said loss or damage so estimated as aforesaid; and the plaintiffs in fact aver and say, that after the making of the said contract and during the said interval of thirty-four days so covered by the said contract of insurance of the defendant, to wit, on the eighteenth day of July, A. D. 1870, the property so insured, to wit, thirteen bales of cotton, of the plaintiffs, stored in tobacco-warehouse No. 2, on O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, were wholly lost to the plaintiffs by fire, not originating from any of the causes or in any of the modes excepted from the defendant's risk, in and by the said "conditions of insurance;" that the cash value of the said thirteen bales of cotton, at the time of the loss and of the plaint-
110 iffs' interest therein, and the amount of the damage to the plaintiffs by the said loss, was and is one thousand and eighteen dollars and ten cents, as ascertained and estimated as in the said conditions of insurance is prescribed; that the plaintiffs forthwith gave to the defendant due notice of the said loss, and as soon as possible thereafter, to wit, on the tenth day of August, A. D. 1870, delivered in as particular an account of the said loss and damage as the nature of the case admitted, signed with their own hands and accompanied with the oath of one of them, declaring and shewing, as in said conditions of insurance is required, and also with a certificate of a magistrate most contiguous to the place of the fire, and not concerned in the loss as creditor or otherwise, nor related to the plaintiffs, as in said conditions of insurance is provided; that the plaintiffs when required, and so far as required after the said loss, have produced and exhibited their books of account and other vouchers to the defendant's agents in support of their said claim, and permitted extracts and copies thereof to be made, and when, and so far as required, have submitted to examination under oath, by a person appointed by the defendant, and subscribed to all such examinations when reduced to writing, and have done, and whenever thereto required, have been at all times ready to do, all, any everything, which by the said conditions of insurance, and the multiplied stipulations of the said contract, they ought or might be required to do in order to the ascer-
111 tainment, proof, and adjustment of the plaintiffs' claim for indemnity against the loss and damage by fire of the said property so covered by the said promise and undertaking of the defendant. Yet the defendant, not denying or disputing the fact or amount of the said loss and damage, nor in any wise objecting to the said notice, proof, and adjustment delivered in by the plaintiffs, has not replaced the said property so lost, nor within said thirty days, or at any time, given notice of an intention so to do, and has not paid the said amount of the said loss and damage of the plaintiffs, nor any part thereof, but the same to pay has hitherto wholly neglected and refused, and still neglects and refuses; and so the defendant its last-mentioned covenant made with the plaintiffs has broken.

And for that also the defendant, a corporation as aforesaid, by the name aforesaid, heretofore, to wit, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy, made its certain contract in writing, of that date, commonly called a policy of insurance, sealed with its corporate seal, and signed by its president, and attested by its secretary; and thereby covenanted, promised, and

agreed to and with the plaintiffs, that if the plaintiffs would, in full, actually pay to the defendant, at its office, a certain premium of insurance, to wit, one dollar and twenty-five cents, the defendants would insure the plaintiffs against loss or damage by fire, to the amount of
112 eleven hundred dollars, on thirteen bales of cotton of the plaintiffs, stowed in tobacco-warehouse No. 2, on O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, and would make good unto the plaintiffs, their executors, administrators, and assigns, all such loss or damage not exceeding in amount the sum insured, as should happen to the property so as above specified as insured, during thirty-four days, to wit, from the twenty-seventh day of June, A. D. 1870, at twelve o'clock at noon, until the thirty-first day of July, A. D. 1870, at twelve o'clock at noon, by fire, not happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, nor from the use of open lights in barns or where shavings are made, nor in buildings unprovided with good and substantial stone or brick chim*nies*, nor in consequence of any neglect of or deviation from the laws or regulations of police, made to prevent accidents from fires—the said loss or damage not to exceed the actual cash value of the property the subject of insurance at the time of the loss—and upon the plaintiffs giving notice forthwith of such loss or damage, in writing, to the defendant, and as soon after as possible delivering in as particular account of the said loss or damage as the nature of the case should admit, signed with their own hands, and accompanying the same with their oath or affirmation, declaring the said account to be true and just, showing also whether any and what other insurance had been made on the same property, giving a copy of the written portion of the policy of each company, what was the whole cash value of the subject in-
113 sured, what the plaintiffs' interest therein, in what general manner the building containing the subject insured and the several parts therof were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, and producing a certificate under the hand and seal of a magistrate or notary public most continguous to the place of the fire, and not concerned in the loss as a creditor or otherwise, nor related to the plaintiffs, stating that he has examined the circumstances attending the fire, loss, or damage alleged, and that he is acquainted with the character and circumstances of the plaintiffs, and that he verily believes that they have, by misfortune, and without fraud or evil practice, sustained loss or damage on the subject insured, to the amount which such magistrate or notary public may certify, and producing and exhibiting whenever required, their books of account and other vouchers to the defendant or its agents, in support of that claim, and permitting extracts and copies thereof to be made, and producing certified copies of all bills or invoices, the originals of which have been lost, and submitting to an examination or examinations under oath by any person appointed by the defendant, and subscribing all the examinations when reduced to writing, and exhibiting to any persons named by the defendant, and permitting such persons to examine any property damaged on which any loss is claimed, and any property saved which was insured by the said policy, the defendant would replace the insured property that should be so
114 lost or damaged, or upon its failure to give notice within thirty days after proofs of loss have been received, of an intention so to replace, would, at the expiration of sixty days after due notice, proof, and adjustment of the loss or damage made and received at the office of the defendant in Baltimore, pay the amount of the said loss or damage,

estimated as aforesaid, reserving to the defendant, in case of partial loss or damage, the right to take the whole or any part of the articles insured. And the plaintiffs in fact say that they, the said plaintiffs, did, at the making of the said contract, actually pay in full to the defendant, at its office, the premium of insurance aforesaid, to wit, one dollar and twenty-five cents; and afterwards and during the interval of time covered by the risk of said insurance, to wit, on the eighteenth day of July, A. D. 1870, the property so insured, to wit, thirteen bales of cotton of the plaintiffs, stored in tobacco-warehouse No. 2, on O'Donnell's wharf, then occupied by the Baltimore Warehouse Company, where wholly lost to the plaintiffs (whatever portion thereof was not entirely destroyed being taken by the defendant) by fire, not happening by means of any invasions, insurrection, riot, or civil commotion, or of any military or usurped power, nor in any of the ways in the said contract herein above stated excepted from the defendant's risk assumed in the said policy of insurance; that the actual cash value of the said insured property so lost at the time of loss was one thousand and eighteen dollars and ten cents, and the costs to the plaintiffs not
115 any less; that the plaintiffs thereupon give notice in writing forthwith to the defendant, at its office in Baltimore, of the said loss, and as soon as possible afterwards delivered into the defendant, at its said office, as particular an account of the said loss as the nature of the case would admit, signed with their own hands, accompanied with the declaration, under oath, in all its particulars, and a certificate under the hand and seal of a magistrate most contiguous to the place of the fire, and not concerned in the loss as creditor or otherwise, nor related to the plaintiffs, stating in all its particulars, as by said contract hereinabove set forth the said declarations and certificate are required to be and contain; and the defendant received the said notice, proof, and adjustment so made, at its office aforesaid, and waived whatever defects or insufficiencies were therein; that the plaintiffs, when required, duly produced and exhibited their books of account and other vouchers, and permitted extracts and copies thereof to be made, and submitted to examination and examinations under oath, by a person appointed by the defendant, and subscribed the same when reduced to writing, and did all other things by them to be done, as by the contract aforesaid of the defendant was required in order to the liability of the defendant; whereby the defendant became thereupon liable to replace or pay for the property so lost by fire as aforesaid. Yet the defendant, not denying or disputing the fact or amount of the loss and damage, nor objecting in any wise to the notice, proof, and adjustment
116 thereof delivered in by the plaintiff as aforesaid, has not replaced the said insured property so lost, nor within said thirty days, or at any time, given notice of an intention so to replace, and has not paid the said amount of the said loss and damage of the plaintiffs so sustained, as by the said contract is required, nor any part thereof, but the same to pay has hitherto wholly neglected and refused, and still neglects and refuses; and so the plaintiffs say that the covenant of the defendant with the said plaintiffs last aforesaid made the defendant hath not kept, but the same hath broken.

Wherefore the plaintiffs are worse, and have damage, by reason of the said several breaches of covenant of the defendant, fifteen hundred dollars; and so much the plaintiffs claim.

J. NEVITT STEELE,
JOHN A. INGLIS,
Attorneys for the Plaintiffs.

Pleas.—Filed 9 January, 1871.

In the superior court.

HOUGH, CLENDENING & CO.
vs.
THE PEOPLE'S FIRE INS. COMPANY.

The defendant in this case, by C. Bohn Slingluff, its attorney, says, it is not indebted as alleged.

And for a further plea, says, it did not promise and covenant as alleged.

117 And for a further plea, says, the plaintiffs did not furnish preliminary proofs of loss to the defendant according to the terms of the policy sued upon, and that the defendant has not waived its rights to accept to the insufficiency of the same.

And for a further plea, the defendant says, that during the time when the said cotton is alleged to have been insured by the said policy of insurance, there were other insurances thereon, and by the terms of said policy the defendant is only responsible for such proportion of such alleged losses as the amount of its insurance shall bear to the whole amount of such other insurance.

C. BOHN SLINGLUFF,
Atty. for Defdt.

Joinder of issue to 1st, 2nd, and 3rd pleas, and replication to 4th plea.—Filed 13 Jan'y, 1871.

In the superior court of Baltimore City.

HOUGH, CLENDENING & CO.
vs.
THE PEOPLE'S FIRE INS. CO. OF BALTI.

The plaintiffs, as to the first, second, and third pleas of defendant, joins issue.

And as to the fourth plea of the defendant the plaintiffs, in reply, say that during the time when the said cotton was insured by the
118 said policy of insurance, there was not other insurance thereon, such that, by the terms of said policy, the defendant is only responsible for such proportion of the losses as the amount of its insurance bears to the whole amount of such insurance; and on this plaintiffs tender issue.

J. NEVITT STEELE AND
JOHN A. INGLIS,
Attys. for Plaintiffs.

Issue joined to replication to 4th plea.

2D OCTOBER, 1871.—Jury sworn.
5TH OCTOBER, 1871.—Verdict for the defendant.
Judgment on verdict for the defendant.
Appeal by the plaintiffs in open court on 23d March, 1872.

Bill of exceptions.—Filed 23d March, 1872.

At the trial of this cause, the plaintiffs, to maintain the issues on their part proved, by the introduction of the act of assembly of 1867, c. 232, in the printed volume, the incorporation of the defendant, and adduced two policies of insurance against fire, issued by the defendant under its corporate seal, the execution of each of which by the defendant was admitted.

The particulars of these policies material to the issues are these: In the earlier of the two, dated June 21st, *June*, 1870, "The President and Directors of the People's Fire Insurance Company of Baltimore, in consideration of one $\frac{64}{100}$ dollars, to them paid by the insured hereinafter named, the receipt of which is hereby acknowledged, do insure Hough, Clendening & Co. against loss or damage by fire, to the amount
119 of fourteen hundred dollars, on 15 bales of cotton stored in tobacco-warehouse No. 2, O'Donnell's wharf, now occupied by the Baltimore Warehouse Company; other insurance permitted without notice until required. Loss, if any, payable to the Baltimore Warehouse Company."

"And the said company do hereby promise and agree to make good unto the said insured, their executors, administrators, or assigns, all such loss or damage, not exceeding in amount the sum hereby insured, as shall happen by fire to the property as above specified, during thirty-five days, to wit, from the twenty-first day of June, 1870, (at 12 o'clock, at noon,) until the 26th day of July, 1870, (at 12 o'clock, at noon;) the said loss or damage to be estimated according to the actual cash value of the said property at the time the same shall happen.'

On this policy there is endorsed in pencil the number in figures "1221."

In the later of the two policies, dated June 27th, 1870, the corresponding portion of the contract is the same, except that the premium is "one $\frac{25}{100}$ dollars;" the amount of insurance is "eleven hundred dollars;" the number of bales is "13;" the time "thirty-four days," from 27th day of June, 1870, (at 12 o'clock, at noon,) until the 31st day of July, 1870, (at 12 o'clock, at noon.)

On this policy there is endorsed in pencil the number in figures "1238."

In the body of the contract in each policy is this stipulation: "In case of loss, the insured shall not be entitled to recover on this policy
120 any greater proportion of the loss or damage sustained to the subject insured than the amount hereby insured shall bear to the whole amount insured thereon, whether such insurance be by specific or by general or floating policies." And also this: "If any other insurance has been or shall hereafter be made upon the said property, and not consented to by this company in writing hereon, . . . this policy shall be null and void."

Among the "conditions of this insurance" annexed to each policy are the following, to wit:

III. "If the property to be insured be held in trust or on commission, or be a leasehold interest or equity of redemption, or if the interest of the insured in the property be any other than the entire, unconditional, and sole ownership of the property for the use and benefit of the insured, it must be so represented to the company, and so expressed in the written part of this policy, otherwise the policy shall be void," &c.

IV. "Goods held on storage must be separately and specifically insured."

X. "In case of any loss or damage to the property insured, it shall be

optional with the company," "to take the goods at their appraised value," "giving notice of their intention so to do within 30 days after having received the preliminary proofs of loss," &c.

The plaintiffs further proved by James Godwin, that he (the witness) was in the employment of the plaintiffs during the years 1869 and 1870; the business of the plaintiffs was that of cotton factors chiefly;
121 that the cotton sent to them was from a large number of different persons, and in lots of various sizes, from one bale upwards, and was to be sold at a time limited, or at the discretion of the factors, or at such time as should be afterwards directed by the shipper, as the instructions happened to be; that the cotton market was declining in the summer of 1870; that the plaintiffs had 675 bales of cotton in the warehouse described in the policies sued on, which warehouse was destroyed by fire on July 18th, 1870; none of it was returned to them after the fire; that Albert Rhett had weighed the cotton, lot by lot, before it was stored; that samples of each lot had been taken out and retained in the office of the plaintiffs. At the time of the fire there was there a sample of each bale that was in the warehouse; that the plaintiffs had, at the time of the fire, insurance on 676 bales of cotton in this warehouse, one more than the number in store there; that in each of the policies held by them the insurance was on a specific number of bales.

On cross-examination, the witness said: He spoke from the books of the house, not from his own knowledge, as to the number of bales. He saw the fire and knew that the cotton of plaintiffs was there. The loss on this was not total. Some bales were burned, some saved. How many were saved witness does not know, nor how many absolutely lost.

The plaintiffs proved further by William H. Roberts, that he (witness) was in the employment of plaintiffs, and kept an account of their
122 cotton stored, distinguishing in what warehouse; on the 20th June, 1870, there were on storage in this particular warehouse 569 bales of plaintiffs' cotton, and 213 more were deposited on the 27th June, 1870; by his record (which the witness produced, and had in his hand in the form of a book of entries) there were 635 bales of their cotton in this warehouse at the time of the fire; of the cotton he had stored there, 11 bales had been removed, leaving 635 bales. None of the cotton was returned to Hough, Clendening & Co. A sample of each bale was kept when stored; these samples were wrapped in paper and marked with the "lot," so that they would know to what lot, but not to what bale it belonged; the samples were kept in the plaintiffs' store.

The plaintiffs further proved by William B. Hooper, that he (witness) was the storekeeper of the Baltimore Warehouse Company in July, 1870; that this warehouse was burned on the 18th July, 1870. The plaintiffs had therein 675 bales of cotton. There were in all 1,452 bales of cotton in the warehouse at the time of the fire; also some tobacco and bark. The other cotton belonged to different parties. Hawkins, Williamson & Co. had 328; Elliot Brothers, 111 bales; John J. Middleton, 12 bales; Dunn, Todd & Co., 133 bales; Mercer & Johnson, 5 bales; J. N. Lewis, 4 bales; Hough, Clendening & Co., 675 bales; A. D. McLeod & Co., 21 bales; J. Henly Smith, 97 bales; W. B. Hooper, 3 bales; Dunn, Todd & Co., 15 other bales; F. L. Brauns & Co., 35 bales; Mercer & Johnson, 8 other bales; and Wagner & Co., 5 bales.

123 There was some bags of bark belonging to McClellan & Co., and 32 hhds. of tobacco belonging to F. W. Beck & Co.; the insurance companies took charge of what was saved, and arranged it; it was sold at auction; some little tobacco was saved and sold.

They further proved by Albert Rhett, that he (witness) is a public weigher; that he weighed nearly all Hough, Clendening & Co.'s cotton; the average weight of the bale is about 420 pounds, from 400 to 420; is under the impression he weighed every bale of their cotton that went into this warehouse; he gave certificates of these weights; identifies certificates shown to him as his, which are adduced and put in evidence, as follows:

List of weigher's certificates.

Date of certificate.	No. of bales.	Aggregate weight.
1870.		
February 5	38 bales	16,098 lbs.
" 9	42 "	17,267 "
" 17	43 "	17,475 "
March 4	40 "	18,157 "
" 18	26 "	11,216 "
April 11	22 "	9,443 "
" 13	42 "	17,324 "
" "	8 "	3,261 "
" 19	30 "	12,214 "
May 3	77 "	31,485 "
" 10	57 "	24,238 "
" 17	30 "	12,011 "
124 " 24	109 "	45,213 "
" 31	25 "	10,612 "
June 11	16 "	6,731 "
" 20	15 "	6,261 "
" 27	10 "	4,333 "
27	13 "	5,482 "
July 10	11 "	4,452 "
" 16	32 "	13,322 "

The plaintiffs further proved by Charles Rhett, that he (witness) was a cotton broker in 1870; it was very often part of his business to determine the grade of cotton; was called upon by Hough, Clendenin & Co., after this fire; went to their office, examined a number of bundles of samples; there were 675 samples; his partner, Mr. Smith, was assisting him; examined them minutely; graded from "good middling" to "low middling" and "ordinary;" made an average of the various bundles; the whole averaged a fair class of "low middling" cotton; estimated its value at time of fire at 18¾ c. per lb.

They further proved by James Hooper, that he (witness) is president of the Baltimore Warehouse Company; gives receipts for cotton deposited on storage; receipts are printed in a particular form. Witness produces the receipts given to Hough, Clendening & Co. for cotton stored, which are put in evidence, as follows:

125 *List of warehouse receipts issued to Hough, Clendenin & Co.*

No. of receipts.	Date of receipt.	No. of bales.	Marks.	Warehouse.	Remarks as to endorsements.
805	February 5th, 1870	38	X Q.	No. 2 tobacco-warehouse...	Recd. for 11 bls, Ap. 4, '70, by Hough, Clendening & Co., endorsed.
830	" 9th "	42	"	"	Blank delivery-order, endorsed.
856	" 15th "	43	"	"	Order of delivery to Balto. Warehouse Co., Feb. 18, 1870, endorsed.
936	March 4th "	40	"	Union dock.....	Removed to No. 2 tobacco-warehouse, June 15, on face.
991	" 18th "	26	"	No. 2 tobacco-warehouse...	Blank delivery-order, endorsed.
1059	April 11th "	22	" 22	"	"
1065	" 13th "	8	" 8	"	"
1066	" 13th "	42	" 42	"	"
1088	" 19th "	30	"	"	"
1124	May 3rd "	77	"	"	"
1132	" 10th "	57	"	"	"
1154	" 17th "	30	"	"	"
1168	" 24th "	109	"	"	"
1179	" 31st "	25	"	"	"
1199	June 11th	16	"	"	"
1221	" 20th	15	"	"	"
1237	" 27th	10	"	"	"
1238	" "	13	"	"	"
1276	July 11th	11	"	"	"
1286	" 15th	32	"	"	"

126 The following is an exact copy of the 1st on the above list, (No. 805,) and the others are exactly like this, except as otherwise shown in the list.

Notice.

The property mentioned in this receipt is held by this corporation as bailees only, and is not insured by this corporation.

BALTIMORE WAREHOUSE COMPANY,
(INCORPORATED 1867,)

No. 805.] *Baltimore, February 5th,* 1870.

Marks.
X Q.

EXPENSES.

Storage, 25 per mo
Labor .....
Cooperage, &c..
Gauging.....
Weighing.....
Elevator.....
Commissions ....
Advances .....

Received by the Baltimore Warehouse Company, in store at No. 2 tobacco-warehouse, from Hough, Clendening & Co., thirty-eight bales cotton, to be delivered according to the endorsement hereon, but only on the surrender and cancellation of this receipt, and on the payment of the charges payable thereon.

[SEAL OF CORPORATION.] JAMES HOOPER,
President.
JAS. B. EDWARDS,
Secretary and Registrar.

(Printed in vignette:) "Act of incorporation, passed 1867. Section
127 10. The receipts, warrants, or warehouse certificates issued by this corporation, shall in all cases be signed by the president or vice-president and secretary of the corporation, and attested by the corporate seal, and may be transferred by endorsement thereof; and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares, and merchandise therein specified, so far as to give validity to any pledge, lien, or transfer

made or created by such person or persons; but no property shall be delivered, except on surrender and cancellation of said original receipt, warrant, or certificate."

(Endorsed:)

"BALTIMORE, , 18 .

"Deliver to the order of , the within-described merchandise.
"HOUGH, CLENDENING & CO.

"Witness:
"

"Recd. April 4th, 1870, eleven bales cotton.
"HOUGH, CLENDENING & CO."

They further proved by this witness, that on the 15th June, 1870, there were 40 bales of cotton, which had been previously stored by Hough, Clendening & Co. in another warehouse of the company on Union dock, removed to tobacco-warehouse No. 2; the cotton that was saved from the fire was sold at auction, by instruction of a committee of the insurance companies; Hough, Clendening & Co. had in-
128 surance on 675 bales of cotton in this warehouse, to the amount of about $60,000. The warehouse company had advanced Hough, Clendening & Co. on the whole number of the bales (675) to about $48,720.

On cross-examination this witness said: The warehouse company did not insure all the cotton in their warehouse; kept $30,000 insurance to cover, in case insurance by the depositors not sufficient; did not insure except where advances had been made. It was the course of business of the warehouse company, on receiving cotton, to give a warehouse receipt, such as those already introduced in evidence; and, if advances were asked, one of the conditions of the advance was, that the depositor should insure in the form adopted in the policy sued on, and deliver such policy to the company, together with the warehouse receipt; the insurance to be for an amount sufficient to cover the advance. The defendant proved by this witness, and put in evidence, two policies of insurance held by the Baltimore Warehouse Company, and outstanding at the time of the fire, as follows:

1. Policy No. 1542, Home Insurance Company of the City of New York, for $20,000, bearing date December 7th, 1869, of which the parts material to this issue are contained in the following extracts, to wit:

In the body of the contract it is stipulated thus:

"By this policy the Home Insurance Company, in consideration of one hundred dollars to them paid by the insured, hereinafter named, the receipt whereof is hereby acknowledged, do insure Baltimore
129 Warehouse Company against loss or damage by fire, to the amount of twenty thousand dollars, on merchandise, hazardous or extra hazardous, their own or held by them in trust, or in which they have an interest or liability, contained in that part of State tobacco-warehouse No. 2, used by them, lying between Frederick-street dock and Long dock, separated by a street from the south end of the Maryland Sugar Refinery; other insurance permitted without notice, unless required; to cover whilst on the street and pavement around said warehouse, as per application. And the Home Insurance Company, above named, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their executors, administrators, or

assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to property as above specified during one year, to wit, from the 7th day of December, 1869, (at 12 o'clock at noon,) until the 7th day of December, 1870, (at 12 o'clock at noon,) the loss or damage to be estimated according to the actual cash value of the said property at the time the same shall happen," &c.

"If any other insurance has been or shall hereafter be made upon the said property and not consented to by this company, in writing hereon," "this policy shall be null and void." In case of loss the insured shall not be entitled to demand or recover on this policy any greater proportion of the loss or damage sustained to the subject insured than the amount hereby insured shall bear to the whole amount insured on the said property."

130 And among the "conditions of insurance" annexed are the following:

4. "If the property to be insured be held in trust or on commission, or be a leasehold or other interest not absolute, it must be so represented to the company, and expressed in the policy in writing, otherwise the insurance as to such property shall be void," &c. "Goods held on storage must be separately and specifically insured."

9. "Persons sustaining loss or damage by fire shall forthwith give notice thereof," &c., "and as soon after as possible they shall deliver in as particular an account of their loss," &c. "And they shall accompany the same with their oath," &c., "declaring what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company," &c., "and until such proof, declaration," &c., "are produced," &c., "the loss shall not be payable."

2d. Policy No. 11898, Associated Firemen's Insurance Company, for $10,000, dated October 29th, 1869, of which the parts material to the issues here joined, are contained in the following extracts:

In the body of the contract, which is under the seal of the company, it is covenanted thus:

"This instrument or policy of insurance witnesseth, that the president and directors of the Associated Firemen's Insurance Company of Baltimore, in consideration of the sum of fifty dollars to the said corporation paid, the receipt whereof is hereby acknowledged, have

131 agreed to insure, and do hereby insure, the Baltimore Warehouse Company against loss or damage by fire to the amount of ten thousand dollars, on merchandise generally, hazardous and extra hazardous, held by them or in trust, contained in that part of No. 2 warehouse used by them lying between Frederick-street dock and Long dock, opposite side of a small street running by south side of Maryland Sugar Refinery; to cover whilst on the street or pavement around said warehouse; other insurance permitted without notice until required, per application. In consideration thereof, or of the premises, the president and directors of the Associated Firemen's Insurance Company of Baltimore do hereby covenant, promise, and agree to and with the said assured, their executors, administrators, and assigns, to pay and satisfy all loss or damage which the assured or their assigns may or shall sustain by fire upon the property hereby insured, not exceeding in amount the said sum of ten thousand dollars, if such loss or damage shall be sustained within the terms of year from the day of the date of these presents, which shall be deemed to expire at noon on the 29th day of October, 1870." "In case the assured shall have already any other insurance made on the hereby insured premises, he shall notify the same to this corporation before or at the time of executing this policy, and

cause the same to be endorsed thereon, otherwise this insurance shall be void and of non-effect; and if the assured or their assigns shall hereafter make any other insurance on the hereby insured premises, he shall, with all reasonable diligence, notify the same to this
132 corporation, and have the same endorsed on this policy, or otherwise acknowledged in writing by this corporation, or in default thereof this policy shall cease and be of non-effect. And it is further declared and agreed that, in case of any other insurance being made upon the premises hereby insured, either prior or subsequent to the date of these presents, the assured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater proportion of the loss sustained than the amount hereby insured shall bear to the whole amount of the several insurances made or to be made on the premises insured by this policy."

And among the "conditions of insuring," accompanying the policy, are the following, to wit:

"3. Goods held trust or on commission are to be declared as such; otherwise the policy will not extend to cover such property."

"4. Every policy of insurance made by this company shall be sealed with its seal, signed by its president, and attested by the secretary, and the person whose interest the insurance is made must be declared and named therein," &c.

"8. All persons insured by this company sustaining any loss or damage by fire are forthwith to give notice," &c., "and as soon after as possible to deliver in as particular account of their loss or damage," &c., "and shall made oath," &c., "whether any and what other insurance is made on the same property."

This witness, on his cross-examination, further said that the
133 warehouse company did not insure goods deposited by customers, except for amount of goods not insured by party. The notice in the receipt was intended to notify depositors that their goods were not to be insured by the company, nor was the company to get insurance, (and witness referred to the charter of the company, A. A. 1867, ch. 268, sec. 10, last paragraph: "Every such receipt, warrant or warehouse certificate shall contain on its face a notice that the property mentioned therein is held by this corporation as bailees only, and is not insured by this corporation.")

(Any statement of the witness as to the intention or purpose of the papers offered in evidence, and other than that shown by the papers themselves, was objected to by the counsel for the defendant as not inquired after by their question, but volunteered by the witness.)

Witness said there were advances on the tobacco, but not on the bark that was in the warehouse at the time of the fire. Two warehouse receipts, to wit, one of June 21st, 1870, numbered "1221," for 15 bales of cotton, and the other of June 27th, 1870, numbered "1238," for 13 bales of cotton, being shown to witness, he said he could not say whether these lots or either of them was among the cotton saved or lost; the value of the whole goods in the warehouse at the time of the fire was from $120,000 to $130,000.

Upon proceeding to examine this witness in reply, the question was propounded: "You have stated in your answer to a question by the counsel for the defendant that you did not insure all the cotton
134 in the warehouse of the Baltimore Warehouse Company, but only to cover advances by the company, in so far as they were not covered by specific insurance of the parties owning the cotton. Will you say whose and what interest was it your intention to cover by

the policies of insurance taken out by the Baltimore Warehouse Company in the Home of New York and in the Associated Firemen's Insurance Company?"

The defendants' counsel objected to the admissability of the evidence sought by the question, and the court sustained the objection and refused to permit the witness to answer the question, saying that the witness had been repeatedly warned by the cross-examining counsel not to speak of intentions, but had nevertheless volunteered to do so.

The plaintiff then offered to prove that at the time of applying for and taking out the two policies taken by the warehouse company in its own name, the president of the warehouse company stated to the agents of the insurance companies applied to that he desired to obtain insurance to protect the warehouse company against any loss or damage not covered by policies taken out by the depositors of cotton or other merchandise in their warehouse in which the warehouse company was interested; and, upon objection made, the court refused to admit the evidence proposed.

And to the refusal of the court to permit the witness under
135 examination to answer the question so propounded to him and to permit the plaintiffs to make the proof so offered, the plaintiffs excepted and prayed the court to sign and seal this their first exception, which is accordingly done this fifth day of October, 1871.

GEORGE W. DOBBIN. [SEAL.]

In addition to the evidence set forth in the first exception above, which is hereby made part of this second exception, the plaintiffs, examining the said witness, James Hooper, in reply, requested him to look at one of the warehouse receipts which he had, in his direct examination, produced and proved, and which had been put in evidence, dated February 5th, 1870, on which there was endorsed "Received April 4th, 1870, eleven bales of cotton," and signed "Hough, Clendening & Co.;" and he said that was the date of the withdrawal of the 11 bales from the warehouse. Witness further said that Mr. Simon, the president of the defendants' company, was one of the committee appointed by the insurers from among themselves to take charge of the cotton, so far as saved from the fire; that the cotton on which advances had been made was one of the warehouse company's collaterals, and witness could not give it up; but, while retaining the cotton and its proceeds, he consented to do whatever the committee ordered, and he acted under their direction. The cotton, in good condition, was delivered up to the parties to whom it belonged, where there were no advances. None of Hough, Clendening & Co.'s cotton was returned to them. Witness examined the premises particularly. Some of the cotton saved was in a
136 very bad condition. Some had but little damage done. A great deal of it was not capable of identification. It was very expensive to get the damaged cotton in a condition to be of anyuse.

The plaintiffs' counsel then propounded to this witness the question, "Did you or not, before the issuing of the policies sued on in this case, and before the deposit of the cotton destroyed by fire on July 18th, 1870, notify Hough, Clendening & Co. that the warehouse company would not effect insurance on their cotton deposited in its warehouse, and that they must insure it themselves?" Upon objection made on the part of the defendant', the court refused to permit the witness to answer this question; and the plaintiffs then offered to prove that before the issuing of the policies sued on in this case, and before the deposit of the cotton destroyed by the fire of July 18th, 1870, the president of the

warehouse company notified the plaintiffs that the warehouse company would not insure their cotton, and that they must insure for themselves, and that this notice was acquiesced in and not objected to by the plaintiffs, and that the plaintiffs did thereupon, for themselves, insure all their cotton; which proof, upon objection made on the part of the defendant, the court refused to allow to be made; and to this refusal of the court to permit the witness to answer the question last propounded to him, and to allow the plaintiffs to make the proof herein offered,
137 the plaintiffs excepted and prayed the court to sign and seal this their second exception; which is accordingly done this fifth day of October, 1871.

GEORGE W. DOBBIN. [SEAL.]

In addition to the evidence set forth in their two preceding exceptions, which is hereby made part of this their third exception, the plaintiffs further proved by George B. Coale a statement, having a certificate appended, signed by witness as for the committee, showing the conditions and expenses of the rescuing and assorting, &c., of the cotton after the fire, the disposition of it, and the mode of distribution of the nett proceeds, as follows:

138, 139 *Statement of bales of cotton stored at the Baltimore Warehouse Co.'s warehouse No. 2, O'Donnell's wharf, and adjustment and apportionment of salvage and expenses from the fire on July 18th, 1870, as per account and vouchers as stated by that company.*

Name of depositor.	Number of bales in warehouse.	Number of bales identified.	Number of bales missing and not identified.	Expenses on identified cotton, per bale, $3.963.	Exp'ns. on missing & not identified cotton, per bale, $6.225.	Total expenses.	Cash realized at auc't'n for identified less expenses, as per st't'm't of a'c tion'r.	Amount of salvage due each depos't'r, p. bale, $14.39.	Net cash due each depos't'r for salvage & sale at auc't'n less t'l exps.
Hawkins, Williamson & Co	328	8	320	31 71	1,991 86	2,023 57	498 98	4,606 22	3,081 63
J. Henley Smith & Co	97	58	39	229 88	242 76	472 64	2,493 82	591 38	2,582 56
J. Newton Lewis & Co	4	2	2	7 93	12 45	20 38	130 13	28 79	138 54
Mercer & Johnson	13	9	4	35 67	24 90	60 57	.....	57 58	.....
A. D. McLeod & Co	21	.....	21	.....	130 72	130 72	.....	302 28	171 76
Hough, Clendening & Co	675	75	600	297 25	3,734 75	4,032 00	4,823 35	8,636 63	9,427 98
W. B. Hooper	3	3	.....	11 89	.....	11 89	152 83	.....	140 94
F. L. Brauns & Co	35	.....	35	.....	217 86	217 86	.....	503 80	285 94
Elliott Brothers	111	65	46	257 62	286 33	543 95	.....	662 14	118 19
J. I. Middleton	12	5	7	19 81	43 57	63 38	.....	100 76	37 38
Dunn, Todd & Co	148	64	84	253 65	522 87	776 52	.....	1,209 13	432 61
Wilson & Selby	5	.....	5	.....	31 12	31 12	.....	71 97	40 65
	1,452	289	1,163	1,145 41	7,239 19	8,384 60	8,099 11	16,740 68	16,458 18
		Total am't of bales.		Total amt. of expenses.					
Beck, tobacco	.....	.....	.....	.....		75 00	52 34		
bark	.....	.....	.....	.....		25 00			
						8,484 60	8,151 45		
							Total amount realized net by auction sales.		

Net cash received by Higgins, Cobb & Co., $24,89.21

Higgins, Cobb & Co. paid Balto. W. H. Co		12,000 00
Have on hand		12,892 13
		$24,892 13
Distribution of cash :		
Amt. to be paid for salvage		$16,458 18
Expenses Warehouse Co		8,409 32
To be paid for bills presented to com		74 88
		$24,942 78
Mercer & Johnson to pay	$2 99	
Beck, tobacco	22 66	
bark	25 00	50 65
		$24,892 13

The certificate endorsed is "Baltimore, Sept. 30th, 1870. The enclosed account presents the distribution of the bills and vouchers for expenditure, furnished by the Baltimore Warehouse Company, and the distribution of the salvage, according to said bills and vouchers, made up under instructions from the committee appointed by the underwriters to superintend the distribution of the salvage.

"GEO. B. COALE, *Of the Committee.*"

And the plaintiffs further proved by this witness, when exam-
140 ined respecting this statement, that there were a number of hands employed about the cotton; that the statement was made up by the direction of the committee, consisting of Snowden, White, Hartman, Andrews, and the witness; there were 289 bales of cotton in all identified as belonging to particular owners, less expenses on them; of these 75 belonged to Hough, Clendening & Co.; these brought at the auction sale, $4,823.35, subject to deduction $297.25 for special expenses; their missing and not identified cotton, (600 bales,) was entitled, as their proportion of the proceeds of sale, to $8,636.63, subject to deduction of $3,734.75, their proportion of the expenses on the unidentified; the net proceeds of their cotton of both classes, was $9,427.98 or $13.94 (13.96⅔) salvage to each bale of Hough, Clendening & Co.; A. D. McLeod & Co.'s 21 bales, and W. B. Hooper's 3 bales were covered by the insurance in the Home and Associated Firemen's Companies, which paid their loss on these policies.

The plaintiffs further proved by W. H. Roberts, recalled, that he had compared the weighers' certificates proved by the witness Albert Rhett with the record kept by himself of cotton stored; the cotton mentioned in these certificates was all stored in this warehouse.

They also proved by James Godwin, recalled, that the samples were taken from the cotton stored in this warehouse; witness handed them to Mr. Charles Rhett for examination.

They further proved by Bernard Hough, one of the plaintiffs,
141 that the plaintiffs had policies covering 676 bales of cotton in this warehouse; each policy covered a specific number of bales; the warehouse company was in the habit of advancing to Hough, Clendening & Co., from time to time, as they made deposits.

On the cross-examination, witness said each policy contained the number of bales insured, as they were specifically insured. The warehouse co. was in the habit of advancing Hough, Clendening & Co. on the various lots deposited from time to time, and Hough, Clendening & Co. insured the various lots as they were deposited.

On re-examination by plaintiffs, witness stated: It was our habit to take out policies on each additional lot of cotton as it came in; we took out policies whenever we added additional cotton.

Thereupon the plaintiffs' counsel asked the witness to explain whether he meant to say that it was his habit to effect insurance on each specific lot of cotton, or to effect insurance generally on an additional number of bales equal to the lot deposited; the witness said, that while the receipt of the cotton was the occasion of taking out the new policy, it was not meant to cover cotton only.

This testimony was objected to by the defendant, as explaining by parol the intention of the party in a written contract, the terms whereof were clear, and it was excluded by the court; and to this refusal of the court to admit this testimony the plaintiffs excepted, and prayed
142 the court to sign and seal this their third exception, which is accordingly done this fifth day of October, 1871.

GEORGE W. DOBBIN. [SEAL.]

The defendant then, to maintain on its part the issues joined, proved by Clark that his (witness') business in part is to adjust losses in insurance matters; was employed by the companies to ascertain loss and

protect their rights in salvage. Witness produced two papers, containing the results of his adjustment, as follows:

143 STATEMENT A.

Companies.	Amount insured.	Number of bales insured.	Dates of policies.	Weights as claimed.	Value at time of fire at 18¾ c.	Amount claimed in process.	Weights of lots at average w't of 417.68 per bale.	Value at 18¾.
			1870.				Lbs.	
Washington	2,800	25	May 31	10,612	1,989 75	2,450 60	10,442	1,957 86
Washington	4,500	42	April 13	17,324	3,248 25	4 038 47	17,542	3,289 11
Potomac	900	10	June 27	4,333	812 43	787 69	4,176	783
Peabody	6,000				4,238 72	5,251 29		4,307 25
					4,238 72		45,944	4,307 25
Atlantic	6,000	110	May 24	45,213				
Consolidated	1,100	11	July 12	4,452	834 75	962 74	4,594	861 36
Consolidated	8,000	77	May 3	31,485	5,903 43	7,001 72	32,161	6,030 18
Consolidated	3,000	26	Mch. 18	11,216	2,103	2,625 65	10,859	2,036 04
People's	1,100	13	June 27	5,482	1,027 87		5,429	1,017 94
People's	1,400	15	" 21	6,261	1,173 93		6,265	1,174 69
City Fire	3,200	32	July 15					
City Fire	4,500	45	April 13					
Home	6,000	57	May 10					
Franklin	3,500	30	" 17					
Citizens'	1,400	16	June 11					
Harford	3,500	30	April 19					
Atlantic	3,500	27	May 24					
	60,400	566						

144 STATEMENT B.

General insurance in name of warehouse co.

Home Insurance Company, New York	$20,000	
Associated Firemans', Baltimore	10,000	
Total	30,000	30,000
Under the protection of the specific policies there were, as appears from Statement A, 566 bales, averaging, say, 417.63 lbs. per bale, 236,406 88/100 lbs., @ 18¾ cts	44,326 39	
No. of bales as claimed by Hough, C. & Co., 675—281,936 lbs., as appears from Statement C, herewith, 281,936 lbs., @ 18¾ cts	52,863	
Therefore, 52,863—44,326.29, amount covered by the general policies and not contemplated by the specific	8,563 71	

We have now to consider the amount of the general insurance that will contribute to H., C. & Co.

Take first the amount of advances by the warehouse co. on the various deposits of cotton, and we have as follows:

To Hough, Clendening & Co	48,720		
" Hawkins, Williamson & Co	16,800		
" McCloud & Co	1,862	35	
" W. B. Hooper	320	97	
Total	67,703	32	
			67,703 32

145 Total value of cotton on which advances had been made Hough, Clendening & Co. 52,863
Hawkins, Williamson & Co 26,861 16
McCloud & Co 1,862 35
W. B. Hooper 320 97

Total $81,907 48 — $81,907 48

From the general insurance take the claims exclusively paid therefrom, viz, those of McCloud & Co., and Hooper, and we have 30,000—2,183.32 $27,816 68

Apportioning this balance in the ratio of the amount involved to ascertain the contributing values, we have in case of Hough, Clendening & Co, $\frac{5286300}{7972416}$ of $27,816.68... 18,444 46

STATEMENT B.—Continued.

In case of Hawkins, Williamson & Co., $\frac{2686116}{7972416}$ of $27,816.68 9,372 22

There is paid from the general insurance for the portion of the cotton not protected by the assigned policies, in am't $8,536.71, hence we have remaining 18,444.46—8,536.71 9,907 75

Now divide this general insurance, pro rata, among the specific insurance covering 566 bales, and we have contributing insurance to each bale 17 50

146 Hence to the People's Ins. Co. we have contributory insurance 4 90

Loss a' per Statement A 2,192 61

Specific insurance 2,500 00
Contribution from general policies. 490 00

Total 2,990 00
The People's pays $\frac{2500}{2990}$ of $2,192.61 $1,833 28

N. B.—Should it be decided that these specific policies are not entitled to contribution from the general insurance, and should the application

of the specific insurance be limited to the number of bales specifically insured, the liability of the People's Ins. Co. is set forth in Exhibit A.

And the said general policies are divided up into contributing insurances, in the ratio of the sound value of the property covered by specific insurances to that covered by general policies; the general insurance should have contributed at the rate of $17.50 per bale to specific insurance. On 28 bales the general insurance would contribute $490; the result would be affected by insurance on the tobacco; the salvage is to be credited to the defendant, its proportion of saved cotton, some $400, to be credited. Witness first applied the general insurance to the cotton not insured; amount of this application, $2,183.32.

On cross-examination the witness said the right of contribution arose from the fact that the warehouse company had made advances on lots of cotton covered by the specific policies and by assignment of specific
147 policies to warehouse company; had made the general insurance contributory; if there was cotton there not advanced on, it was not included in the assignment; $8,536.71 were allowed to Hough, Clendening & Co. for difference of insurance, to cover 109 bales not considered as specifically insured. There was cotton not covered, but no claim was made by any company or person. If general policies contribute to pay warehouse company's advances, they would be entitled, in witness' view, to subrogation.

No further testimony was offered on either side, and thereupon the plaintiffs submitted to the court the following prayers for instruction to the jury, to wit:

Plaintiffs' prayers.

1. If the jury shall find that the plaintiffs are entitled to recover, then in ascertaining the amount which the plaintiffs are to recover, the jury are not to make any abatement therefrom on account of the two policies of insurance issued by The Home Insurance Company, and The Associated Firemen's Insurance Company, to the Baltimore Warehouse Company, and offered in evidence by the defendant. (Refused.)

2d. That by the true construction of the policy of insurance issued by the defendant to the plaintiffs, bearing date the 27th June, 1870, and offered in evidence by the plaintiffs, it covered not thirteen specific bales of cotton, but any thirteen bales of cotton which were stored by the plaintiffs in tobacco-warehouse No. 2, on O'Donnell's wharf, and were there remaining on the 18th July, 1870. (Refused.)

3d. That by the true construction of the policy of insurance
148 issued by the defendant to the plaintiffs, bearing date 21st June, 1870, and offered in evidence by the plaintiffs, it covered not fifteen specific bales of cotton, but any fifteen bales of cotton which were stored by the plaintiffs in tobacco-warehouse No. 2, on O'Donnell's wharf, and were there remaining on the 18th July, 1870. (Refused.)

4th. If the jury find from the evidence that the plaintiffs are entitled to recover, then, in ascertaining the amount of loss or damage which the plaintiffs are to recover, the jury ought to deduct such sum as from the evidence in the cause they may find is the proportion due to twenty-eight bales of cotton, in the distribution of the proceeds of sale of the reserved and saved cotton. (Refused as unnecessary.)

Which prayers were one and all refused; and the defendant submitted to the court the following prayer, for instruction to the jury, to wit:

Defendant's prayer.

The defendant prays the court to instruct the jury that the plaintiffs have offered no proof upon which the jury can allow damages for any injury by fire to the cotton insured by either of the policies of the defendant which are in suit. (Granted.)

To which refusal of the plaintiffs' prayers, and each of them, and granting of the defendant's prayer, the plaintiffs excepted, and prayed the court to sign and seal this their fourth exception; which is accordingly done this fifth day of October, 1871.

GEORGE W. DOBBIN, [SEAL.]

149 Plaintiffs' cost.....$105 30
Defendant's " 19 15

STATE OF MARYLAND,
City of Baltimore, sct:

I, George Robinson, clerk of the superior court of Baltimore City, do hereby certify that the foregoing is a true transcript, taken from the record and proceedings of the said court in the therein-entitled cause, and made according to the rules prescribed by the court of appeals.

In testimony whereof I hereunto set my hand and affix the seal of the superior court of Baltimore City aforesaid on this twenty-sixth day of March, eighteen hundred and seventy-two.

[SEAL'S PLACE.] GEO. ROBINSON, *Clerk.*

[U. S. int. rev. stamp—5cts.]

And now come into the court of appeals here as well the said Bernard Hough, William Clendening, Thomas R. Clendening, use of their assignee, The Baltimore Warehouse Company, by I. Nevitt Steele and John A. Inglis, esqs., their attorneys, as the said The President and Directors of the People's Fire Insurance Company of Baltimore, by S. T. Wallis and F. C. Slingluff, esqs., its attorneys, and thereupon on motion of the said The President and Directors of The People's Fire Insurance Company of Baltimore, by its attorneys aforesaid, it is

150 ruled by the court here that the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid, so as aforesaid brought before the court of appeals here for correcting the errors supposed to be therein, or judgment by the court of appeals here will be entered against them in default thereof; and the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, by their attorneys aforesaid, say that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in the plea aforesaid given, was given for the said The People's Fire Insurance Company of Baltimore against the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, when, by the law of the land, that judgment ought to have been given for the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, against the said The People's Fire Insurance Company of Baltimore, therefore, in that there is manifest error, and they pray that the judgment aforesaid, for that error and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that they, the said Bernard Hough et al., use of their

assignee, The Baltimore Warehouse Company, may be restored to all things which they have lost by occasion of the said judgment,
151 and that the said The People's Fire Ins. Co. of Baltimore may rejoin to the errors aforesaid, and so forth. And thereupon it is ruled by the court of appeals here, that the said The People's Fire Ins. Co. of Baltimore join in the errors by the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, above assigned in the record of proceedings aforesaid, or judgment by the court of appeals here will be rendered against it in default thereof. And the said The People's Fire Ins. Co. of Baltimore, by its attorneys aforesaid, says there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and it prays that the court of appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid by the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, above for error assigned, and that the said judgment may be in all things affirmed, and so forth. Thereupon further process of and upon the premises between the parties aforesaid is, by virtue of an act of assembly in such cases made and provided, continued before the court of appeals here until the first Monday in April next. The same day is given to the said parties there, then to hear the judgment of the court of appeals hereof and upon the said premises, and so forth.

And now at this day, to wit, the said first Monday in June, being the day of the said month, in the year of our Lord one thousand eight hundred and seventy-two, come again into the court of appeals
152 here the parties aforesaid by their attorneys aforesaid. Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid as the matters aforesaid, by the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Company, above for error assigned, being seen and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here that there is error in the record of proceedings aforesaid, and also in the giving of the judgment aforesaid, therefore it is considered by the court of appeals here that the judgment aforesaid given in form aforesaid, be reversed and a new trial ordered. And it is further considered by the court of appeals here that the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Co. of Baltimore, have execution against the said The People's Fire Ins. Co. of Baltimore, as well for the costs and charges aforesaid adjudged unto them in the said superior court, as also the sum of $130.25 adjudged unto the said Bernard Hough et al., use of their assignee, The Baltimore Warehouse Co., by the court of appeals here, on their assent, for their costs and charges which they had sustained by occasion of the prosecution of the said appeal, &c.

The court of appeals of Md. on the day of filed its opinion in the above cause in the words following, to wit:

153 Court of appeals of Maryland, October term, 1873.

BERNARD HOUGH, WILLIAM CLENDENING AND Thomas R. Clendening, trading as Hough, Clendening & Co.

vs.

THE PRESIDENT AND DIRECTORS OF THE PEOple's Fire-Insurance Company of Baltimore.

Judge GRASON delivered the opinion of the court.

At the trial of this cause in the court below, the appellants, for the purpose of showing what goods and merchandise were intended to be covered by the policies issued to the warehouse company by the Associated Firemen's Insurance Company and the Home Insurance Company, offered to prove by the president of the warehouse company that, at the time he applied for the insurances, he informed the agents of the insurance companies that he desired to obtain insurance to protect his company from loss or damage not recovered by policies taken out by those who had deposited cotton or other merchandise in the warehouse, and in which the warehouse company had an interest. Upon objection made by the appellees, the evidence was ruled to be inadmissable, and to this ruling the first exception was taken. When a contract is reduced to writing, and is couched in plain and unambiguous language, courts must look to it alone to find the intention and meaning of the parties, and parol proof is inadmissable. (Balto. Fire Ins. Co.
154 vs. Loney, 20 Md., 36; Henderson vs. Mayhew, 2 Gill., 409.) There was, therefore, no error in the ruling of the court below in this respect.

The appellants then offered to prove that before the issuing of the policies sued on in this case, and before the deposit of their cotton in the warehouse, they were informed by the warehouse company that the latter would not insure the cotton so deposited, but that the appellants must insure for themselves, and that said notice was acquiesced in and not objected to by them, and that they did thereupon insure for themselves. This proof was objected to and ruled out by the court, and this forms the ground of the second exception. We concur in this ruling, as the evidence offered was totally irrelevant. Notice from the warehouse company that it would not insure cotton stored in its warehouse and belonging to the appellants was unnecessary and could not in any manner affect the rights or liabilities of the parties to this suit.

The third exception was taken to the rejection of evidence offered for the purpose of showing what was meant by the insurance of the respective lots of cotton procured by the appellants. Bernard Hough had testified that it was the habit of the appellants to take out policies on each additional lot of cotton as it came in. He was then asked to explain whether he meant to say that it was the habit of the appellants to effect insurance on each specific lot of cotton, or to effect insurance gen-
155 erally on an additional number of bales equal to the lot deposited. The evidence sought to be elec'ted by this question was intended to show what was the intention and purpose of the appellants in taking insurance, and the effect of the policies taken out by them, and as we have already stated in considering the first exception, this could only be shown by the terms of the policies which were issued. They constituted the contract between the parties, and being free from ambiguity, parol evidence was not admissable to explain them.

The appellee's prayer, which was granted, instructed the jury that there was no proof upon which they could allow damages for any injury by fire to the cotton insured by either of the policies sued on. This prayer assumed that the policies sued on were specific as to the fifteen and thirteen bales respectively, as well as an absence of evidence to show whether the two specific lots so insured were included in the seventy-five bales which sustained partial injury only, and were identified as belonging to the appellants, or whether they were included in the mass which was destroyed. We have no doubt that the policies are specific and not general. The appellants began to deposit cotton in the warehouse mentioned on the 5th day of February, and continued to

deposit, at intervals, until the 15th day of July, 1870, only three days before the fire occurred, and for each lot deposited received from the warehouse company a receipt, warrant, or certificate therefor, which specified the number of bales and the date of the deposit, and
156 also the mark on the bales, the letters X Q being marked on each bale deposited by the appellants. These receipts or certificates were all numbered, and that for the fifteen bales deposited on the 20th June was numbered "1221," and the one for the thirteen bales deposited on the 27th June was numbered "1238." Policies of insurance were at once taken out to cover the particular number of bales deposited, and on their face the loss, if any, is made payable to the warehouse company, and the policies and warehouse receipts were delivered to the warehouse company to secure advances made by it. On the policy on the fifteen bales, dated 21st of June, there is endorsed in pencil the number in figures, "1221," and on that on the thirteen bales dated 27th of June, also in pencil, "1238." It does not appear in proof by whom these numbers on the policies were endorsed, but it seems clear they were endorsed thereon for the purpose of corresponding with the number of the warehouse receipts given for the particular cotton insured, so that the same might be more readily identified.

It is also shown at the time of each deposit the depositors reserved a sample of the particular lot deposited. All these facts go to show that the intention of the contracting parties was to effect a specific insurance on each particular lot of cotton as it was deposited in the warehouse. But independently of these facts and looking to the terms of the policies alone, it is manifest that each policy is specific and covers no cotton but the specified bales to which it refers. The amount
157 of the liability of the insurance company is limited in each policy to a specific sum, and the policies bear date on the day or the day after the cotton is deposited. Can it be pretended that a policy issued on the 27th of June to cover thirteen bales deposited on that day is to be held to cover thirteen other bales deposited long before, and which had been previously insured, or that the policy issued the 5th of February on thirty-eight bales can be said to apply to the same number of bales deposited in July thereafter, when, for aught we know to the contrary, the appellants had not on the 5th of February a bale beyond the thirty-eight bales first deposited?

The true construction of each policy issued is that it covers and was intended to cover only the specific number of bales in each deposit and the insurance on which was effected at the time of the deposit, the policy of the 21st of June, 1870, covering only the fifteen bales deposited on the 20th of June, and the policy of the 27th of June the thirteen bales deposited on that day. But while we are of the opinion that the policies sued on are specific and not general, we think that there was evidence in the cause to show damage to the cotton deposited in the warehouse on the 20th and 27th of June, respectively, and covered by the policies sued on. It is true there is no evidence to show whether this particular cotton was among the seventy-five bales which were identified after the fire as belonging to appellants, or was among that which was de-
158 stroyed; but the proof leaves no room for doubt that it was included in one or the other class, and was damaged, if not destroyed. It was incumbent upon the appellants, in order to recover for a total loss, to show that the cotton insured was wholly destroyed, and having failed to show this, it must be assumed that it was only partially damaged. Proof was offered that these two lots of cotton were weighed at the time they were stored in the warehouse, the fifteen bales weighing six thou-

sand two hundred and sixty-one pounds, and the thirteen bales five thousand four hundred and eighty-two pounds, making, in the aggregate, eleven thousand seven hundred and forty-three pounds, and that a fair class of low middling cotton was worth in the market eighteen and three-quarter cents per pound. It was also proved by Mr. Rhett that he had examined the several samples of the cotton stored by the appellants in the warehouse, and that they graded from "good middling" to "low middling" and "ordinary," the whole averaging a fair class of "low middling," thus showing that the market value of the cotton insured, and injured by the fire, was eighteen and three-quarter cents per pound. Proof of the extent of the damage was also furnished by the list of the sales of the cotton which was partially damaged and identified, so that the extent of the loss of the appellants could have been easily ascertained by the jury. It was therefore error to grant the prayer of the appellees, and thus to take the case wholly from the jury. As we
159 have shown that the policies sued on were specific and not general, it follows that the second and third prayers of the appellants were erroneous, and were properly rejected.

The court below having granted the appellee's prayer, refused the fourth prayer of the appellants as unnecessary; but, as we have shown, the appellee's prayer ought not to have been granted, because there was evidence of loss upon which the jury should have been permitted to pass, the appellants' fourth prayer ought to have been granted, as it states the correct measure of damage to be recovered.

The appellants' first prayer asked an instruction that the jury are not to make any abatement from the damages (if the verdict should be for the plaintiffs) on account of the two policies of insurance by the Home Insurance Company and the Associated Firemen's Insurance Company to the Baltimore Warehouse Company.

The policies in the Home and Associated Firemen's companies were taken out by the Baltimore Warehouse Company, while the policies in the company of the appellees were issued to Hough, Clendening & Co., loss, if any, payable to the Baltimore Warehouse Company. In the case of the Nat'l Fire Ins. Co. vs. Crane, 16 Md., 293, a policy had been issued to James L. Gray & Bro., against damage by fire to property in Baltimore City, "the loss, if any, payable to William Crane & Co.," and the court of appeals held that this language was an admission that
160 Crane & Co. had an interest in the contract, and were to receive the benefit of it, and that the policy might be regarded as having been, at its inception, assigned to them with the assent of the company. See also Brown vs. The Roger William Ins. C., 5 Rho. Isl. R., 394. In the case before us the proof shows that the warehouse company had advanced to Hough, Clendening & Co. over forty-eight thousand dollars upon the cotton belonging to them and stored in the warehouse, and the warehouse company had therefore a lien upon it for such advances, as well as for storage, which constituted an insurable interest in the cotton. The policy in the Associated Firemen's Company was for ten thousand dollars, and insured the warehouse company against loss by fire for one year, "on merchandise generally, hazardous or extra hazardous, held by them or in trust, contained in that part of No. 2 warehouse used by them, &c., to cover whilst on the street or pavement around said warehouse." The policy in the Home Company is nearly in the same language, but is for twenty thousand dollars, and "on merchandise, hazardous or extra hazardous, their own, held by them in trust, or in which they have an interest or liability." In the policies to the appellants, as well as to the warehouse company, are stipulations that, in case of loss,

the insured shall not recover any greater proportion of the loss or damage sustained to the subject insured than the amount thereby insured shall bear to the whole amount insured.

161 The law seems to be well settled that a person having goods in his possession as consignee or on commission, may insure them in his own name, and in the event of loss recover the full amount of the insurance, and after satisfying his own claim, hold the balance as trustee for the owner. (Story on Ag., sec. 111; Etna Insur. Co. vs. Jackson & Co., 16 B. Munroe, 258; De Forrest vs. Fulton Insur. Co., 1 Hall, 126; Lee vs. Adsit, 37 N. Y. Rep., 90; Waters vs. Assur. Co., 85 E. C. L. Rep., 879; London and Northwest R. W. Co. vs. Glyn, 102 E. C. L. Rep., 660; North British Insur. Co. vs. Moffitt, Law Rep. for Jan., 1872, p. 31; Siter et al. vs. Morrz, 13 Penna. State Rep., 219.

The policies issued to the warehouse company by the Home and Associated Firemen's cover not only the property belonging to the warehouse company, but also all which was held by it in trust or in which it had an interest. By goods "held in trust" are meant goods with which the assured is intrusted, "not goods held in trust in the strict technical sense, so held that there was no' only an equitable obligation in the assured enforcible by a subpœna in chancery, but goods with which they were intrusted in the ordinary sense of the word." Waters vs. Assur. Co., 85 Eng. C. L. Rep., 879. It seems clear, therefore, that the cotton of the appellants was insured by the two policies issued to the warehouse company, and that it can recover not only to the extent of its interest in the property insured, but to the extent of the loss,

162 unless the right of recovery to that extent is limited by some provision or condition of the policies. The policies sued on having on their face been made payable to the warehouse company, they inured to the benefit of that company, and may be considered as in favor of the same assured on the same interest in the same subject, and against the same risks, as the policies which were issued directly to the warehouse ocmpany by the Home and Associated Firemen's companies. They are therefore what are termed double policies, (Sloat vs. Royal Ins. Co., 49 Penna. State Rep., 18,) and the insurance companies issuing them are bound to contribute their respective proportions of the loss. Merrick vs. Germania Fire Insurance Company, 54 Penna. State Rep., 282; Flanders on Fire Insurance, 40; Etna Fire Insurance Co. vs. Tyler, 16 Wend., 396, 400; Baltimore Fire Insurance Company vs. Loney, 20 Md., 38. The appellants' first prayer was therefore properly refused.

As the court below erred in granting the appellee's prayer and in rejecting the fourth prayer of the appellants' the judgment appealed from must be reversed, and a new trial awarded.

Judgment reversed and new trial awarded.

(Decided 20th June, 1872.)

MARYLAND, *sct:*

I, James S. Franklin, clerk of the court of appeals of Maryland

163 do hereby certify that the aforegoing is truly taken from the record and proceedings of the court of appeals aforesaid.

In testimony whereof I hereunto set my hand as clerk and affix the seal of the said court of appeals this 4th day of April, anno Domini 1874.

[PLACE OF SEAL.]

JAMES S. FRANKLIN,
Clerk Court of Appeals of Maryland.

MARYLAND, *set:*

I, James L. Bartol, chief judge of the court of appeals of Maryland, do hereby certify that James S. Franklin is clerk of the said court of appeals, and that the foregoing attestation by him is in due form and by the proper officer.

Given under my hand this day of eighteen hundred and

JAS. L. BARTOL.

MARYLAND, *set:*

I, James S. Franklin, clerk of the court of appeals of Maryland, do hereby certify that the Hon. James L. Bartol, who has signed the annexed certificate is, and at the time of so doing was, chief judge of the court of appeals of Maryland, and that full faith and credit are due and ought to be given to his acts as such, as well in courts of justice as thereout.

164 In testimony whereof I have hereunto set my hand as clerk and affixed the seal of said court of appeals this 4th day of April, A. D. 1874.

[PLACE OF SEAL.] JAMES S. FRANKLIN,
Clerk Court of Appeals of Maryland.

STATE OF MARYLAND, *to wit:*

I, James Black Groome, governor of the State of Maryland, do hereby certify that James S. Franklin, esq., who has signed the annexed certificate, is, and at the time of so doing was, the clerk of the court of appeals of the State of Maryland duly commissioned and qualified according to law, and that full faith and credit are due and ought to be given his acts as such.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Maryland on this fourth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

[PLACE OF SEAL.] JAMES BLACK GROOME.

By the Governor:
R. C. HOLLIDAY,
Secretary of State.

THOMAS J. CAREY, the next witness called by the plaintiffs, testified as follows:

165 I was president of the Peabody Fire Insurance Company of Baltimore when the policy of $6,000 on 110 bales of cotton was issued by that company. The policy of the Peabody and that of the Atlantic covered the same 110 bales. Mr. Luckett, a broker, came to us and said he wished to place $12,000 on 110 bales of cotton. We said we would take $6,000 on the 110 bales, but would not take more. Some days after the fire, Mr. George B. Coale came in and said the losses on the cotton could not be adjusted by the number of bales mentioned in the policies; that that would have to be ignored, and the adjustment must be according to the amount of money named in the policies. I told him we would not consent to that, as our policy was for a specific number of bales; that his proposed mode of adjustment was not in accordance with our policy, and would throw us into a greater loss than we were liable for, but we would be willing to settle according to the

number of bales. He said it would have to be in accordance with his plan and left. We afterwards received a form of adjustment from the warehouse company in accordance with Mr. Coale's plan. Afterwards Mr. Coale said all the companies had objected to that mode of adjustment, and the loss would have to be adjusted according to the number of bales each company would cover, and that the Atlantic and Peabody must cover together 220 bales in two separate lots of 110 bales each. After the decision of the court of appeals in the case of Hough, Clendening & Co. against the People's Ins. Co., Mr.
166 Coale called at my office and had the text of the decision of the court, and said it was a very wide decision & made his policy bear everything, & would consume a large portion of it. He said nobody had sent him any adjustment showing how much the loss was and what was the amount claimed of him, and he would like to know the amount. I told him Captain Clark had made an adjustment involving his case. He said he did not know that Capt. Clark was competent to make such an adjustment. Afterwards I saw Mr. Coale, and he then said he thought his policy would be brought into a loss to the extent of $14,000 according to that adjustment of Clark's. He said he thought $14,000 was the lowest figure at which the loss of his company could be calculated. That was the only occasion I recollect on which he spoke of the amount his policy might be liable for. He said he thought that was the lowest figure at which the loss of his company could be calculeted according to the principle of the court of appeals. After the fire, a meeting of underwriters was called and a committee appointed to attend to separation and preservation of the cotton. Mr. Hooper, as president of the warehouse co., took the proceeds of the sale of the salvage, and as each company settled with him accounted for its share. Mr. Coale had no part in assorting or taking charge of the cotton. He was on the committee to apportion the salvage.

On cross-examination the witness said :

167 My office and that of George B. Coale were in adjoining buildings. We have been accustomed to have a great deal of talk together on insurance subjects. When the assortment of cotton was made, Coale was not there. The committee of underwriters, of which I was one, had charge of the cotton, together with the warehouse company, till the day of sale. Coale was not there. He was afterwards secretary of a meeting of which Kane was president.

HERMAN SIMON, then called by the plaintiff, testified as follows:

I was and am president of the People's Fire Insurance Company. There was a meeting of underwriters immediately after the fire for the purpose of taking care of the salvage. At the first meeting all the underwriters in the city were present. Mr. Coale was not there. He was present at a meeting held in my office in the month of July. I was not aware that he represented a policy until some time in August. After the question arose about contributory policies I was pretty sore about that because I had paid Beck's loss without knowing of the Home and Associated Co.'s policies. Mr. Coale called frequently and endeavored to show that my views on the subject were not correct. It was at the end of July or beginning of August that I paid Beck. The duties of the second committee, of which Mr. Coale was a member, were to ascertain and distribute the salvage. My settlement with the Baltimore Warehouse Co. of the case which had been to the court
168 of appeals was a compromise; no precise calculation was made. The entire policy was $2,500; our liability under it, tak-

ing off salvage, was $2,200 or $2,300. The amount of the supposed liability in contribution of the Home and Associated Firemen's Companies might be $400 or $500, leaving us liable to the amount of $1,800 or $1,900. The contributory share of the general policies in the Beck loss which we had paid in full was estimated to be about equal to this; so we cried quits and squared accounts and passed no money. It was but a rough calculation.

The plaintiff then called Mr. LUCKETT, who testified as follows:

I was a broker and had been instructed by Hough, Clendening & Co. to get $12,000 insurance for them on 110 bales of cotton then in the Baltimore Warehouse Company's warehouse, and I placed it with the Peabody and Atlantic Companies. I first applied to Mr. Carey of the Peabody to take the whole risk, but he declined to take more than $6,000 of it. I went from him to Mr. George, president of the Atlantic, & offered him the other $6,000, and finally persuaded him to take it. At that time I had instructions to get insurance on 110 bales only and to get $12,000 on them.

Mr. WHITE, the witness next called by the plaintiff, testified that at the time of the issuing of the two policies of $6,000 each by the Peabody and Atlantic companies the witness was president of the Franklin Insurance Company, and was present when Mr. Luckett told
169 Mr. George the Peabody Company had agreed to take $6,000 and wished him to take the other $6,000 on the same 110 bales of cotton; that Mr. George at first declined, but then consented on condition that the Franklin Company would re-insure him to the amount of $2,000, which witness agreed to do and did.

The testimony of the preceding two witneses, and that of Mr. Carey, touching the same subject of the circumstances attending the obtaining of the said two $6,000 policies, and the succeeding testimony of Mr. George, was received subject to exception.

Mr. ATKINSON, then called by the plaintiff, testified that he was a clerk of the defendant in 1870, and proved the insurance record of the plaintiff, a book in the handwriting of Mr. Edwards, formerly secretary of the said warehouse company, but now deceased, and the said book was offered in evidence by the plaintiff & admitted by the defendant's counsel, and contained (amongst others) the following entries.

170 *Extract from "Insurance Record" of the Baltimore Warehouse Company.*

Date of Insurances.	For whose a/c insured.	No. of contract.	No. of W. H. rect.	Where insured & for what amt.	Location of.	Name of company.	No. of policy.	Expiration of poli	Remarks.
1870.				No. 2, Tob'o W. H.				1870.	
May 25.	Hough, Clendening & Co.	322	1168	$6,000	Balto.	Peabody,	$4945	July 24.	Burned.
		"	1168	$6,000	"	Atlantic F. & M.	$3756	" 24.	"

The witness explained that No. 322 in the entry was the number of the contract with Hough, Clendening & Co.; No. 1168 was the number of the warehouse receipt on which the loan was effected; No. 4945 was

the number of the Peabody policy & No. 3756 was that of the Atlantic Fire & Marine Insurance Company.

The said witness Atkinson further testified that he was present at a conversation which occurred about the 15th of September, 1872, between James H. Barney, president of the Baltimore Warehouse Company, and George B. Coale in reference to the fire which occurred July 18th, 1870. Mr. Coale talked about settling with plaintiff as for a loss of $11,000, & asked to have an account made up for that purpose, and afterwards he came in and said it was a larger amount than that & was about $13,000.

ISAAC S. GEORGE, called by the plaintiff, testified that he was
171 the president of the Atlantic Fire & Marine Insurance Company, and that on the 24th of May, 1870, that company issued a policy No. 3756, to Hough, Clendening & Co., for $6,000, on 110 bales of cotton, the written part of which policy was in the following words:

"By this policy of insurance, the president and directors of the Atlantic Fire and Marine Insurance Company of Baltimore,

"No. 3756. $6,000

"In consideration and from and after the actual payment to the company of nine dollars, to be paid by the assured hereinafter named, do insure Hough, Clendening & Co., against loss or damage by fire, to the amount of six thousand dollars, on one hundred and ten bales of cotton, their own, or held by them in trust, or on commission, or sold but not delivered, stored in State tobacco-warehouse No. 2, O'Donnell's wharf, now occupied by the Baltimore Warehouse Co.

"Loss, if any, payable to the Baltimore Warehouse Co. Other insurance permitted without notice until required.

"From May 24th, 1870. 2 months.

"To expire July 24, 1870."

The said witness further testified as follows:

That policy was procured by Mr. Luckett. He called at our office & asked me if we would take an insurance of $12,000 on 110 bales of cotton. He wished it in two policies of $6,000 & did not want it otherwise. I said I would have no objection to take half if we could re-insure, & we did
172 re-insure in the Franklin for $3,000. Mr. Luckett accepted the policy & that was the whole of the conversation as far as I can recollect. I told him we would take the $6,000 if some other company would take the other $6,000. He returned and said the Peabody had taken the other six, & we wrote the policy for $6,000. The understanding was the policy of the Atlantic & that of the Peabody were on the same 110 bales.

Being cross-examined, this witness further testified:

We settled for the loss, upon the principle that we and the Peabody had insured $6,000 each on the same 110 bales. We had a long contention. It went into litigation. We settled on a basis of a loss of 55 bales to us, that is half of 110 bales. We made our settlement independently of the Peabody; settled with Mr. Hooper. The warehouse company insisted that we had insured on 110 bales and the Peabody on 110 bales. We resisted that. I don't think it was a compromise settlement. The salvage was allowed for. The settlement was made in 1871 or latter part of 1870. I don't think we took the Home & Associated Firemen's policies into account in the settlement. When the salvage was deducted from the amount, we paid the balance.

Mr. BOYD, secretary of the Associated Firemen's Ins. Co., the next witness called by the plaintiff, testified that:

Our company had issued a policy for $10,000 in the same terms as that of the defendant & after the decision of the court of appeals, Mr. George B. Coale asked the witness how much the Associated F. Co. had paid.
173 I said $4,000 & he said that was too much under the decision of the court of appeals on his figuring of the matter. After the decision of the court of appeals, we still thought we ought not to contribute & very reluctantly acquiesced in the decision. Mr. Coale called on us at our office after that decision & spoke of the amount due by our respective companies. There was no question of the want of preliminary proof. Mr. Coale always said he would carry the question to the United States court. He made no objection, as I understood, to the figuring; only said he thought we had paid too much on the basis of the court of appeals' decision. Besides $623.67, our proportion of the loss on the 24 bales, we paid $3,940, being $4,000, less $60 discount for cash, in full of all demands. I can't say whether this was a compromise or not.

FRANK P. CLARK, also called by the plaintiff, testified as follows:

I am a lawyer by profession, and have also occupied myself in making insurance adjustments as a speciality; in 1870 devoted myself principally to that. At the instance of a number of companies, I think of all who had specifically insured cotton, &c., contained in the said warehouse No. 2, I made a series of adjustments in this case. I had several interviews with Mr. George B. Coale from time to time; I can't say how brought about. He said I differed very widely as to the principles on which the settlement should be made. He was familiar with the subject, & discussed with me my adjustments. We discussed it
174 among other occasions in the superior court while the suit against the People's Co. was proceeding.

The plaintiff then produced and offered in evidence to the jury the following statements or adjustments, being the same which the said witness Clark had made as above mentioned, and which was offered merely as statements or illustrations of the results arrived at upon the different theories of adjustment therein adopted.

A.

In this distribution of the loss I make no distinction between the policies made payable to the warehouse company and those remaining in the name of consignors, upon this construction of the meaning of the court of appeals, viz, that if the warehouse company could recover on the general policies, and "after satisfying its own claim, hold the balance as trustee for the owner," then this general insurance should contribute to the loss not only on the consignments on which the warehouse company had advanced, but on those with which it was entrusted.

General insurance in name of W. H. Co.

Home Ins. Co., N. Y.	20,000	
Associated Firemen's, Balto	10,000	
		30,000

VALUES OF THE VARIOUS CONSIGNMENTS.

Hough, Clendenin & Co	cotton	52,863		
Hawkins, Wilkinson & Co	do	26,861	16	
175 Elliott Bros	do	8,188	81	
McCloud & Co	do	1,862	35	
F. L. Brauns & Co	do	2,888		
W. B. Hooper	do	320	97	
F. W. Beck & Co., tobacco		6,000		
Total				98,984 29

Now, assuming that all consignments were under the protection of the general policies, then to ascertain what portion of the general policies would be contributory insurance to each specific policy, may we not take it to be such amount of the general policies as each particular consignment covered under the specific policies would be entitled to claim, were there no specific insurance? If so, we have the following as the amount recoverable by the warehouse co. for the use of the various consignors:

Hough, Clendening & Co., $\frac{5286300}{9898429}$ of $30,000		16,021	64
Hawkins, Williamson & Co., $\frac{2686116}{9898429}$	"	8,141	03
Elliott Bros., $\frac{818881}{9898429}$	"	2,481	85
McCloud & Co., $\frac{186235}{9898429}$	"	564	43
F. L. Brauns & Co., $\frac{288800}{9898429}$	"	875	29
W. B. Hooper, $\frac{32097}{9898429}$		97	29
F. W. Beck & Co., $\frac{600000}{9898429}$		1,818	47
			30,000
Hough, Clendenin & Co., contributory insurance		16,021	64
On each bale, $\frac{1602164}{675}$		23	73

Then the proportion of loss to each company can readily be found:

176 Harford Ins. Co		3,500		
Contributory ins., 30 bales		711	90	
				4,211 90
Weight of 30 bales.				2,349 56
Harford pays $\frac{3500000}{4211190}$		1,952	41	
Genl. pol. $\frac{711190}{4211190}$		397	15	
				2,349 56
Franklin same		1,952	41	
Genl. pol		397	15	
				2,349 56
People's Ins. Co		2,500		
Contr. ins., 28 bales		664	44	
				3,164 44
Weight of 28 bales.				2,192 99
People's pays $\frac{2500000}{3164444}$		1,732	52	
Genl. pol. do. $\frac{664444}{3164444}$		460	47	
				2,192 99

Potomac Ins. Co	900	
Contr. ins., 10 bales	237 30	
		1,137 30
Weight of 10 bales.		783
Potomac pays $\frac{90000}{113730}$	619 63	
Genl. pol. $\frac{23730}{113730}$	163 37	
		783
Peabody Ins. Co	6,000	
Contr. ins., 55 bales	1,305 13	
		7,305 13
Weight of 55 bales.		4,307 25
Peabody pays $\frac{600000}{730513}$	3,537 71	
Genl. pol. pays $\frac{130513}{730513}$	769 54	
		4,307 25
177 City F. Ins. Co	7,700	
Contr. ins., 77 bales	1,827 21	
		9,527 21
Weight of 77 bales.		6,030 47
City Fire pays $\frac{770000}{952721}$	4,873 87	
Gen'l pol. " $\frac{182721}{952721}$	1,156 60	
		6,030 47
Washington Ins. Co	7,300	
Contr. ins., 67 bales	1,589 91	
		8,889 91
Weight of 67 bales.		5,246 99
Washington pays $\frac{730000}{888991}$	4,308 59	
Gen'l pol. " $\frac{158991}{888991}$	938 40	
		5,246 99
Atlantic Ins. Co	9,500	
Contr. ins., 82 bales	1,945 86	
		11,445 86
Weight of 82 bales		6,421 87
Atlantic pays $\frac{950000}{1144586}$	5,330 10	
Gen'l pol's " $\frac{194586}{1144586}$	1,091 77	
		6,421 87
Consolidated Ins. Co	12,100	
Contr. ins., 114 bales	2,705 22	
		14,805 22
Weight of 114 bales		8,927 75
Consolidated pays $\frac{1210000}{1480522}$	7,296 44	
Gen'l pol's pay $\frac{270522}{1480522}$	1,631 26	
		8,927 75

Home Ins. Co	6,000	
Contr. ins., 57 bales	1,352 61	
		7,352 61
Weight of 57 bales.		4,464
Home pays $\frac{60000}{735261}$	3,642 82	
Gen'l pol. " $\frac{135261}{735261}$	821 18	
		4,464
Citizens' Ins. Co	1,400	
Contr. ins., 16 bales	379 68	
		1,779 68
178 Weight of 16 bales.		1,253 06
Citizens' pays $\frac{140000}{177968}$	985 73	
Gen'l pol's " $\frac{37968}{177968}$	267 33	
		1,253 06

The 109 bales not covered by specific insurance can only resort to the general insurance for indemnity, therefore there would be appropriated in the first instance to cover this loss the proportion which 109 bales could claim. Then, after the liabilities of the various companies insuring specifically have been determined, any balance of the general policies, unconsumed revert to the warehouse company for the benefit rateably of those consignors who could alone look to these general insurances for indemnity.

109 bales would be entitled to	2,586 57

Now it is evident that the loss on the 109 bales is $8,536.50, hence there is a deficit of $5,949.93 to be met by the remainder of the general policies. The remainder is $5,340.85, leaving a deficit of $609.08, which must finally be satisfied out of the balances of the general policies which remain after contribution has been made to the loss on the various consignments in the warehouse.

Deficit	609 08

HAWKINS, WILLIAMSON & CO.

Contribution from general policies, (number of bales not specifically mentioned in the policies)	8,141 03	
179 SPECIFIC INSURANCE.		
Royal Ins. Co	10,000	
Western do	6,500	
Connecticutt do	16,000	
Peabody do	5,000	
Hartford do	3,000	
Home do	5,000	
		53,641 03
Amt. of loss, 143,262 lbs., at 18¾ cts		26,861 16

Therefore—

Royal	pays $\frac{1000000}{5364103}$	of 26,861.16	.....	5,007 58	
Western	do $\frac{650000}{5364103}$	"	.....	3,254 93	
Connecticutt	do $\frac{1600000}{5364103}$	"	.....	8,012 12	
Peabody	do $\frac{500000}{5364103}$	"	.....	2,503 79	
Home	do $\frac{500000}{5364103}$	"	.....	2,503 79	
Harford	do $\frac{300000}{5364103}$	"	.....	1,502 28	
Gen'l pol's	do $\frac{814103}{5364103}$	"	.....	4,076 68	
					26,861 16

ELLIOTT BRO'S. & CO.

Contribution from gen'l policies	2,481 85	
In this case, the specific number of the bales are not mentioned in the policies.		
SPECIFIC INS'S.		
Potomac Ins. Co	14,000	
Peabody "	3,500	
Royal "	3,400	
		23,381 85
Loss		3,721 67
180 Potomac pays $\frac{1400000}{2338185}$	2,228 38	
Peabody " $\frac{350000}{2338185}$	557 09	
Royal " $\frac{340000}{2338185}$	541 17	
Gen'l pol's " $\frac{248185}{2338185}$	395 03	
		3,721 67

MC CLOUD & CO.

The general policies alone can be resorted to, there being no specific insurance.

Prop'n of general pols	564 43	
Loss	1,862 25	
Deficit		1,297 82

F. L. BRAUNS & CO.

Contribution from gen'l pol's	875 29	
Peoples' Ins. Co	2,888	
		3,763 29
Loss		2,888
Peoples pays $\frac{288800}{376339}$	2,216 29	
Gen'l pol's " $\frac{87529}{376339}$	671 71	
		2,888

W. B. HOOPER.

General policies must pay, there being no specific ins.

Prop. of gen'l pol's	97 29	
Loss	320 97	
Deficit		223 68

F. W. BECK & CO.

Contribution from gen'l policies	1,818 47	
Peoples' Ins. Co	6,000	
		7,818 47
Amt. of loss		6,000
181 Peoples' pays $\frac{600000}{781847}$	4,604 49	
Gen'l pol's do. $\frac{181847}{781847}$	1,395 51	
		6,000

General policies have been appropriated as follows:

Hough, Clendening & Co	16,021 64	
Hawkins, Williamson & Co	4,076 68	
Elliott Bros	395 03	
McCloud & Co	564 43	
F. L. Brauns & Co	671 71	
W. B. Hooper	97 29	
F. W. Beck & Co	1,395 51	
		23,222 29
30,000—23,222.29=balance of gen'l policies		6,777 71

Which will be appropriated as follows:

On the 109 bales, Hough, Clend. & Co.	609 08	
" " cotton, McCloud & Co	1,297 82	
" " " W. B. Hooper	223 68	
Balance	4,647 13	
Total		6,777 71

B.

Adopting the theory that the court of appeals decides that the general insurance is double or contributory only to the specific policies made payable to the Baltimore Warehouse Company, and to the extent of that company's interest therein:

182 ADVANCES.

On consignment of Hough, Clendening & Co.	48,720	
" " " Hawkins, Williamson & Co	16,800	
" " " McCloud & Co	1,480	
" " " F. W. Beck & Co	4,234	
		71,234

Claim of W. B. Hooper is ignored because, upon examination of the records of the warehouse co., it does not appear that he ever consigned any property to them.

Amt. of gen'l insurance		30,000
Prop'n of Hough, Clendening & Co., $\frac{48720}{71234}$	20,518 37	
Hawkins, W. & Co., $\frac{16800}{71234}$	7,075 08	
McCloud & Co., $\frac{1480}{71234}$	623 32	
F. W. Beck & Co., $\frac{4234}{71234}$	1,783 23	
		30,000

HOUGH, CLENDENIN' & CO.

Contributory insurance		20,518 37
On each bale, $\frac{20518\,37}{675}$		30 39
Harford Ins. Co.	3,500	
ontributory ins., 30 bales	911 70	
		4,411 70
Value 30 bales		2,349 56
Harford pays $\frac{350000}{441170}$	1,864 01	
Gen'l pol's " $\frac{91170}{441170}$	485 55	
		2,349 56
Franklin Ins. Co. pays	1,864 01	
Gen'l pol.	485 55	
		2,349 56
183 People's Ins. Co. "	1,636 11	
Gen'l pol's "	556 88	
		2,192 99
Potomac Ins. Co. "	585 34	
Gen'l pol's "	197 66	
		783
Peabody Ins. Co. "	3,368 79	
Gen'l pol's "	938 46	
		4,307 25
City Fire Ins. Co. "	4,624 94	
Gen'l pol's "	1,405 53	
		6,030 47
Washington Ins. Co. "	4,102 66	
Gen'l pol's "	1,144 33	
		5,246 99
Atlanic Ins. Co. "	5,087 38	
Gen'l pol's "	1,334 49	
		6,421 89
Consolidated Ins. Co. "	6,940 54	
Gen'l pol's "	1,987 21	
		8,927 75

Home Ins. Co. pays	3,463 94	
Gen'l pol's do	1,000 06	
		4,464
Citizens' Ins. Co. pays	930 04	
Gen'l pol's do	323 02	
		1,253 06
Gen.l pol's pay on the 109 bales		3,312 51
By summing up it will be found that there has been appropriated of the gen'l policies	13,171 25	
Amount remaining	7,347 12	
		20,518 37
Now 108 bales	8,536 50	
184 To the payment of which has been appropriated of the general policies	3,312 57	
Balance	5,223 99	
Amount of gen'l pol's unconsumed and which can be appropriated elsewhere	2,123 13	
		7,347 12

HAWKINS, WILLIAMSON & CO.

In this case there are two classes of policies, the one made payable to the warehouse company, and the other not. Let the policies in name of H., W. & Co., and not assigned to the W. H. Co., have their rateable proportion of the loss determined, and then those made payable to the warehouse co.:

Payable to W., H. Co.:		
Connecticutt	5,000	
Peabody	5,000	
Harford	3,000	
Home	5,000	
		18,000
In name of Hawkins, Williamson & Co.:		
Royal	10,000	
Western	6,500	
Connecticutt	6,000	
Do	5,000	
Contribution from genl. policies	7,075 08	
		34,575 08
		52,575 08
Royal pays $\frac{10000}{45500}$ of $26,861.16	5,903 51	
Western do. $\frac{6500}{45500}$ " "	3,837 28	
185 Connect. do. $\frac{11000}{45500}$ " "	6,493 68	
		16,234 65

Now 26,861.16—16,234.65=10,626.51, which must be paid out of the $18,000 specific insurance and the contribution from the genl. policies, 18,000 + 7,075.08=25,075.08.

Connecticutt pays $\frac{500000}{2507508}$ of $10,626.51	2,118 94		
Peabody " " " "	2,118 94		
Home " " " "	2,118 94		
Harford " $\frac{300000}{2507508}$ " "	1,271 36		
Gen'l policies " $\frac{707508}{2507508}$ " "	2,998 33		
		10,626	51
Amt. paid by specific policies		16,234	65
Total		26,861	16
Assignment of gen'l pol's		7,075	08
Appropriation "		2,998	33
Balance to be appropiated elsewhere		4,076	75

F. W. BECK & CO.

People's Ins. Co	6,000		
Gen'l pol's	1,783 23		
		7,783	23
Loss		6,000	
People's Ins. Co. pays	4,625 32		
Gen'l pol's	1,374 68		
		6,000	
Amt. of gen'l pol's assigned	1,783 23		
" " " appropriated	1,374 68		
Balance		408	55

Amounts of the general policies left of the various assignments:

186 Hough, Clendening & Co	2,123 13		
Hawkins, Williamson & Co	4,076 75		
F. W. Beck & Co	408 55		
		6,608	43
Out of which must be paid the balance of claim of McCloud & Co. not met by the proportion of the general policies in the first instance assigned to it		1,239	03
6,608.43 — 1,239.03 = the amount still left unconsumed of the general policies		5,369	40

C.

On the theory that the general insurance and those policies made payable to the warehouse co. are double insurances, and limiting the right of contribution to them; also that the W. H. Co. can recover to the extent of the loss, and is not confined to their interest, divide the gen'l ins. among the various consignments advanced upon in the ratio of their values, and we have:

Hough, Clendening & Co	52,862		
Hawkins, W. & Co	26,861 16		
McCloud & Co	1,862 35		
F. W. Beck & Co	6,000		
		87,586	51

	Hough, C. & Co. would have $\frac{5286200}{8758651}$ of 30,000		18,106 23	
	Hawkins W. & Co. $\frac{2686116}{8758651}$	"	9,200 62	
187	McCloud & Co., $\frac{186235}{8758651}$	"	637 85	
	F. W. Beck & Co. $\frac{600000}{8758651}$	"	2,055 30	
				30,000
	Hough, Clendenin & Co. would have $\frac{1810623}{645}$ = $826.824 pr. bale:			
	Harford Ins. Co		3,500	
	Gen'l pol's contr. 30 bales		804 73	
				4,304 73
	Value 30 bales			2,349 56
	Harford pays $\frac{350000}{430473}$		1,910 37	
	Gen'l pol's " $\frac{80473}{430473}$		439 19	
				2,349 56
	Peabody Ins. Co. pays		3,457 17	
	Gen'l pol's "		850 08	
				4,307 25
	Washington Ins. Co. "		4,210 42	
	Gen'l pol's "		1,036 57	
				5,246 97
	Potomac Ins. Co. "		603 21	
	Gen'l pol's "		179 79	
				783
	Atlantic Ins. Co. "		5,214 53	
	Gen'l pol's "		1,207 34	
				6,241 87
	Consolidated Ins. Co. "		7,126 68	
	Gen'l pol's "		1,801 07	
				8,927 75
	City Fire Ins. Co. "		4,754 99	
	Gen'l pol's "		1,275 48	
				6,030 47
	Home Ins. Co. "		3,557 45	
	Gen'l pol's "		906 55	
				4,464
	Franklin Ins. Co. "		1,910 37	
	Gen'l pol's "		439 19	
				2,349 56
188	Citizen's Ins. Co. "		959 05	
	Gen'l pol's "		294 01	
				1,253 06

People's Ins. Co. "	1,686 36	
Gen'l pol's "	506 63	
		2,192 99
Gen'l policies pay on 109 bales		2,923 81
Amount contributed by gen'l policies	11,859 71	
Remainder of " "	6,246 52	
		18,106 23
109 bales =	8,536 50	
From which take	2,923 81	
Balance		5,612 69
6,246.52 — 5,612.69, amt. remaining of gen'l pol's		633 83

HAWKINS, WILLIAMSON & Co., (vid. apportionment B.)

We have, then, spec. pol's	18,000	
Amt. from gen'l pol's	9,200 62	
		27,200 62
Connect. pays $\frac{500000}{2720062}$ of $10,626.51	1,953 36	
Peabody " " "	1,953 36	
Home " " "	1,953 36	
Harford " $\frac{300000}{2720062}$ "	1,172 01	
Gen'l pol's " $\frac{920062}{2720062}$ "	3,594 42	
		10,626 51
Assignment of gen'l policies	9,200 62	
Appropriation "	3,594 42	
Balance		5,606 20

F. W. BECK & Co.

189	People's pays	4,469 10	
	Gen'l pol's "	1,530 90	
			6,000
	Amts. of gen'l pol's remaining:		
	In case of Hough, C. & Co.	633 83	
	Hawkins, W. & Co.	5,606 20	
	F. W. Beck & Co	524 40	
			6,764 43
	Out of which must be paid McCloud & Co., balance unsatisfied		1,224 50
	6,764.43—1,224.50=amt. remaining of gen'l pol's		5,539 93

D.

Same theory as in C, but general insurance first applied to pay the loss on articles not under the protection of the special pol's:

On 109 bales	8,536 50	
McCloud & Co	1,862 35	
		10,398 85
From amount of gen'l pol's	30,000	
Take	10,398 85	
Balance		19,601 15

Apportion this among consignments on which advances were made in the ratio of the values of the same, and we have:

Hough, Clendening & Co., $\frac{5286200}{8572416}$	12,087 24	
Hawkins, W. & Co., $\frac{2686116}{8572416}$	6,141 84	
F. W. Beck & Co., $\frac{600000}{8572416}$	1,372 07	
		19,601 15

190 Hough, Clendening & Co.:

$\frac{12087\ 24}{566}$=21.355 per bale.

Harford would have contr. ins. 30 bales	640 65	
Amt. of policy	3,500	
		4,140 65
Value of 30 bales		2,349 56
Harford would pay $\frac{350000}{414065}$	1,986 02	
Gen'l pol's do. $\frac{64065}{414065}$	363 54	
		2,349 56

Hawkins, Williamson & Co., vid. apportionment B.:

We have then special pol	18,000	
Amt. from gen'l pol's	6,141 84	
		24,141 84
Harford pays $\frac{300000}{2414184}$ of 10,626.51	1,320 51	
Connecticutt do. $\frac{500000}{2414184}$ "	2,200 85	
Home do. $\frac{500000}{2414184}$ "	2,200 85	
Peabody do. $\frac{500000}{2414184}$ "	2,200 85	
Gen'l pol's do. $\frac{614184}{2414184}$ "	2,703 45	
		10,626 51

F. W. Beck & Co.:

People's pay	4,883 31	
G. P. do	1,116 69	
		6,000

Therefore we have remaining of general policies:

Hough, Clendening & Co.	4,669 03	
Hawkins, Williamson & Co.	3,438 39	
F. W. Beck & Co	455 38	
Total		8,562 80

191 The defendant objected to the admission in evidence to the jury of the said adjustments; but the court overruled the said objection, and allowed the said adjustments to go to the jury, only for the purpose of assisting the jury in calculating the amount of liability of the defendant upon the several hypothesis of fact stated in said calculation, but not to be obligatory upon the jury; to which ruling of the court and admission in evidence of the said documents, the defendant excepted, and prayed the court to sign and seal this its 1st bill of exceptions, which is done accordingly this 16th day of April, A. D. 1874.

WILLIAM F. GILES. [SEAL.]

2nd bill of exceptions.

In the circuit court of the United States for the district of Maryland.

THE BALTIMORE WAREHOUSE CO.
vs.
THE HOME INSURANCE COMPANY OF THE CITY of New York.

At the trial of this cause, after the proceedings had been had and the evidence given mentioned & set forth in the previous bill of exceptions of the defendant, which by reference is hereby made part of this bill, as therein stated, the said witness Clark being further examined on the part of the plaintiff testified as follows:

The liability of the defendant under the hypothesis—

1st. That the defendant is bound to contribute for all the property in the warehouse, whether the plaintiff had an interest in it or not, is ⅔ of $25,352.87, that is $16,901.92.

192 2nd. Upon the hypothesis that the defendant is liable to contribute only with those policies which are payable to the warehouse company, and to the extent of the warehouse company's interest in the property destroyed, is $16,420.40, that being ⅔ of the liability of the Home & Associated.

3rd. Under the hypothesis that the defendant & and the Associated & only these policies made payable to the plaintiff are contributory to each other, & that the plaintiff is entitled to be paid to the extent of the loss. & is not confined to its own interest in the property, the liability of the defendant is $16,306.72.

4th. Under the same hypothesis as last stated, except that the general policies shall first be applied to pay the loss on articles not under the protection of the specific policies, the liability of the defendant is $14,291.46.

I had an interview with Mr. Coale about 6th of September, 1872, the drift of which led me to think there would be some proposition of settlement. I do not mean to say that Mr. Coale ever committed himself to me. All of our interviews were discussions as to the liability for contribution. In that one interview he advanced the hope that there would be an amicable settlement. He never alluded to the subject of preliminary proofs, and never denied the liability of his company. I supposed there had been an agreement entered into on the subject, as I had particularly urged at the outset that proof should be made.

193 The said witness then produced the following letter, which he had received about Sept. 6th, 1872, from George B. Coale, which the plaintiff offered in evidence; the defendant objected to the admissability thereof, and it was read subject to exception.

F. P. CLARK, Esq.:

D. SIR: The Associated will docket by consent. I will probably see their counsel to-morrow, and we will without delay agree upon a basis of settlement.

Yrs., &c.,

GEO. B. COALE,

Up to the receipt of that letter our interviews were for the purpose of discussing the amount of defendant's liability, upon the theory that it was liable for something, and not for negotiation.

Upon cross-examination the said witness testified:

The said adjustments were made up at the instance of the special insurers. The Home and Associated Companies had nothing to do with it. They were made before the decision in the case of Hough & Co. vs. The People's Ins. Co., but the particular paper offered in evidence was prepared after that decision. Mr. Coale never admitted the principle of liability. He always denied the right of contribution. He at the same time discussed with me the results under the theory of such liability.

194 The said adjustment statements or accounts A, B, C, & D, do not include salvage.

While Coale did not admit directly any liability at all for contribution, he himself prepared a résumé of my theories & an adjustment upon the theory that special policies were to pay without contribution from the Home & the Associated, & that the plaintiff could collect from the general policies such deficiencies only as the specific policies failed to cover & such loss as had no specific policies.

The adjustments I made were upon the best information I could get from the specific policies & from all sources, & upon the theory that that there was but one lot of 110 bales.

I made inquiry of the warehouse co., & was informed that there was but one lot of 110 bales, or, in fact, 109 bales.

After Coale was in possession of all the points contained in the adjustment papers prepared by me which have been offered in evidence, and after the decision of the court of appeals in the case of Hough, Clendening & Co., I had several interviews with him. I did not take the salvage into account, because the insurance companies had accepted an abandonment.

JOHN CUSHING, the president of the Associated Firemen's Insurance Company, a corporation incorporated by the State of Maryland, & doing business in the city of Baltimore, also called by the plaintiff, then testified as follows:

Our company had a policy of $10,000 on property in the ware-

195 house of the plaintiff. I had an interview with George B. Coale, after the Hough, Clendening & Co. case was decided in the court of appeals. I can't recollect what he said. He called in reference to the decision of the court of appeals. We thought it an unjust decision. The interview was in relation to the loss we mutually had in regard to contributory policies. After the decision of the court of appeals there was no question as to our legal liability for something.

Being cross-examined, the said witness further testifies:

I recollect after we had several interviews, Mr. Coale's speaking about taking the matter to the United States court. Our discussions were as to

amount of our respective liabilities under the decision of the court of appeals. We supposed we could not take our case there, and therefore settled. There was nothing said about the want of preliminary proof. He wanted to take it to the United States court, because he did not want to pay it. He said nothing about taking the question of preliminary proof to the United States court.

JAMES H. BARNEY, the present president of the Baltimore Warehouse Company, the next witness called on the part of the plaintiff, testified as follows:

After the decision of the court of appeals, I had various interviews with George B. Coale.

(The following testimony was objected to by the defendant, and was received subject to exception.)

He spoke of the injustice and illegality of it, & wanted to know
196 what the warehouse company claimed of his company; & when I spoke of Capt. Clark's statements, he said he rejected them & would make up a statement of his own. Subsequently he told me he found he could not pay less than $11,000 by any statement he could figure out. Early on the 10th or 11th of September, 1872, he came into the office of the warehouse company, not for the purpose of discussing this matter at all, but introducing a stranger, and when about to leave the office said, "We can't get off for as little as we thought; we shall have to pay you $13,000." I specially charged my mind with his declaration; there was no qualification about it & I felt justified in announcing it to my board as a solution of the difficulty, & did so announce it. I waited some days; nothing was said. Then he met me in the street & told me he had concluded to remove the case into the United States court. There was no denial of liability when he named 11 or 13 thousand dollars, and I supposed he had figured his liability to the smallest sum. As regards the settlement with the Peabody Company, it was on the basis of one insurance on 110 bales by the Peabody and Atlantic Companies. Mr. Carey convinced me it was the same lot. One-half of the contribution we claimed from the general insurances was deducted, and the salvage on 109 bales also. Mr. Coale afterwards made offers of less amounts by way of peace. He never suggested the want of preliminary proof until a few days before the institution of this suit.

197 The defendant then produced and offered in evidence the following letter, dated May 27th, 1873, from Mr. Barney to Mr. Coale, offering, if objection was made to the reading of the whole letter, to read only that part touching the defence of want of preliminary proof. The defendant admitted that said letter was a negotiation for a compromise.

J. H. BARNEY, *President.* C. A. FOOTE, *Secretary.*

BALTIMORE WAREHOUSE COMPANY,
OFFICE NO. 2, RIALTO BUILDING, SECOND STREET,
Baltimore, May 27th, 1873.

GEO. B. COALE, Esq.,
Agent of the Home Ins. Co. of New York:

DEAR SIR: I am willing to compromise the claim of the warehouse co. for loss of the 109 bales cotton, which were not covered by specific policies by accepting therefor nineteen hundred & eighteen $\frac{30}{100}$ dol-

ars, and interest from Sept., 1870, & giving the receipt you propose, wh. the modifications indicated by the pencilled additions thereto, provided it be distinctly understood between us that the warehouse co. reserves all claim for itself, or as trustee for others, by way of contribution or otherwise, for the destruction or damage of any other cotton, & that the Home Ins. Co. will not interpose the objection of want of preliminary proof, or any other technical defense to any suit
198 which may be brought therefor. We will bring our suit in such court as we may choose, and you will exercise such right of removal as you may have.

Yrs., respy.,

JAMES H. BARNEY, *Prest.*

But the plaintiffs' counsel objected to the reading to the jury of any part of said letter, and the court sustained the objection and refused to allow the said letter or any part thereof to be read. To which said ruling of the court and rejection of evidence the defendant excepted, and prayed the court to sign and seal this its bill of exceptions, which is done accordingly this 16th day of April, A. D. 1874.

WILLIAM F. GILES. [SEAL.]

3rd bill of exception.

In the circuit court of the United States for the district of Maryland.

THE BALTIMORE WAREHOUSE COMPANY
vs.
THE HOME INSURANCE COMPANY OF THE CITY of New York.

At the trial of this cause, after the proceedings had been had and the evidence produced and given to the jury mentioned and set forth in the two preceding bills of exception of the defendant, which by reference are hereby made parts of this bill of exceptions, as if the
199 matter thereof were incorporated herein, the plaintiff called Mr. C. A. FOOTE, the secretary of the Baltimore Warehouse Company, who testified, (the evidence being received subject to exception) that he was present at an interview between Mr. Barney and Mr. Coale in September, 1872, about this loss, in which he understood Mr. Coale to say that he concluded to pay us about $11,000, and afterwards he came in and said he had made a mistake, that he was bound to pay us about $13,000.

The plaintiff further offered in evidence the act of assembly of Maryland of 1868, chapter 243.

CHAPTER 243.

An act to repeal sections twenty-eight and twenty-nine, of article fifty-six of the code of public general laws, and re-enact the same with amendments, so as to read as follows:

SECTION 1. Be it enacted by the general assembly of Maryland, That sections twenty-eight and twenty-nine of article fifty-six of the code of public general laws, be, and the same are hereby, repealed, and re-enacted so as to read as follows:

SEC. 28. Any agent or agents of foreign insurance companies, doing

business or proposing to do business in this State, shall pay for his or their license to the comptroller of the treasury, the sum of four hundred dollars annually for each and every company represented
200 by him or them, but before the comptroller shall issue said license he shall require a statement, under oath, of the true financial condition of the office or offices proposed to be represented by him or them, and for which he or they may make application for license, and the comptroller shall also require as a condition precedent to issuing of said license, the exhibition of authority from the parent office or offices to settle losses without the interference of the officer or officers of the said parent office or offices.

SEC. 29. No person shall act as such insurance agent without complying fully and entirely with the provisions of section twenty-eight of this act; any person so offending shall forfeit and pay into the Treasury the sum of five hundred dollars, one-half of which shall be placed by the treasurer to the credit of the public-school fund, and the other half to the informer, the whole amount of which shall be recoverable by law as other fines and penalties are recovered; provided that nothing in this act shall be so construed as to effect in any way regularly licensed insurance brokers.

SEC. 2. And be it enacted that this act shall take effect from and after the date of its passage.

Approved March 28, 1868.

& proved that the defendant was a foreign insurance company doing & prososing to do business in Maryland, & that George B. Coale, aforementioned, was duly licensed, under said act, as agent of the de-
201 fendant in said State & and the city of Baltimore.

The plaintiff here closed its case.

The defendant then produced and read in evidence to the jury, the following statement made by the said Foote, the secretary of the plaintiff, proving by Mr. Foote that he had made it correctly from the books of the plaintiff, and by George B. Coale that it had been furnished to him upon his application made to the said warehouse company, as a true statement of the facts contained therein. He said:

I made out the paper now shown me. I know nothing of the subject-matter of its contents, except what I got from a similar statement made by the deceased secretary of the plaintiff & from the books.

[3] The plaintiff objected to the admissability of the paper. The court admitted it & the plaintiff reserved an exception.

The witness in cross-examination then said:

No. 1168 in that statement refers to the number of the certificate given for the cotton deposited. The lot covered by that certificate seems to have been covered on the 24th of May by two policies for $6,000 each. I suppose the number 55, which is in red ink, means ½ of the 110 bales covered by each of the two policies.

202 No. of certif.	No. of bales.	Date of deposit.	Date of advance.	Amount of advance.	No. of policy.	A mount of policy.	Date of policy.	No. of bales on policy.	Estimated value of cotton per bale.	Am't due by ins. co.	Salvage due them.	Net amount.	Name of company.
		1870.											
991	26	Mar. 18	Mar. 18	1,600	½1	3,000	Mc'h 18	26	78.32	2,036.32	363.15	.....	Consolidated.
1059	22	Apl. 11									4	.....	
1065	8	" 13	Ap'l. 14	1,800	2	3,500	Ap'l 14	27	"	2,114.64	377.11	.....	Atlantic.
856	43	Feb'y 15	" 20	3,100	3	4,500	" 13	42	"	3,289.44	586.63	.....	Washington.
830	42	" 9					e					.....	
1066	42	Ap'l 13	20	6,000	4	4,500	" 13	45	"	3,524.40	628.53	.....	City Fire.
805	27	Feb'y 5										.....	
1088	30	Ap'l 19	" 20	4,000	5	3,500	" 19	30	"	2,349.60	419.02	.....	Harford.
1124	77	May 3	May 5	5,200	6	8,000	May 3	77	"	6,030.64	1,075.48	.....	Consolidated.
1132	57	" 10			7	6,000	" 10	57	"	4,464.24	796.14	.....	Home.
1154	30	" 17	May 20	6,300	8	3,500	" 17	30	"	2,349.60	419.02	.....	Franklin.
1168	109	" 24	" 25	8,000	9	6,000	" 24	55	"	In pencil { 4,307.60	768.20	.....	Atlantic.
					10	6,000	" 24	55	"	{ 4,307.60	768.21	.....	Peabody.
1179	25	" 31	June 3	1,800	11	2,800	" 31	25	"	1,958	349.18	.....	Washington.
936	40	Moved.	" 15	2,720								.....	
1199	16		" 11		12	1,400	June 11	16	"	1,253.12	223.47	.....	Citizens.
1221	15	June 20			13	1,400	" 21	15	"	1,174.80	209.51	.....	People's.
1237	10	27	" 28	2,500	14	900	27	10	"	783.20	139.67	.....	Potomac.
1238	13	27	27		15	1,100	27	13	"	1,018.16	181.57	.....	People's.
1276	11	July 11	July 1		16	1,100	July 12	11	"	861.52	153 64	.....	Consolidated.
1286	32	15	12	5,700	17	3,200	" 15	32		2,506.24	446.95	.....	City.
								109	"	8,536.88	1,522.44	.....	Home & Associated.
	675			48,720		60,400		675		52,866	9,427.92	.....	

(All the figures in this column are in lead-pencil.)

The defendant also produced the following tabular statement which had been previously made by Mr. Edwards the former secretary of the plaintiff, which was also admitted in evidence.

203 No. of certif.	No. of bales.	Date of deposits.	Date of advance.	Amt. of advance.	No. of policy.	Amt. of policy.	Date of policy.	No. of bales.	(This column is in lead-pencil.)	
		1870.								
991	26	Mar. 18.	Mar. 18.	16 00	1	30 00	Mch. 18.	26	Consolidated	2,036 32
1059	22	Apl. 11.								
1065	8	" 13.	Apl. 14.	18 00	2	35 00	Apl. 14.	27	Atlantic	2,114 64
856	43	Feb'y 15.	" 20.							
830	42	Feb'y 9.		31 00	3	45 00	" 13.	42	Washington	3,289 44
1066	42	Apl. 13.	Apl. 20.	60 00	4	45 00	" 13.	45	City	3,524 40
805	27	Feb'y 5.								
1088	30	Apl. 19.	Apl. 20.	40 00	5	35 00	" 19.	30	Harford	2,349 60
1124	77	May 3.	May 5.	52 00	6	80 00	May 3.	77	Consolida'd	6,030 64
1132	57	" 10.			7	60 00	" 10.	57	Home	4,464 24
1154	30	" 17.	" 20.	63 00	8	35 00	" 17.	30	Franklin	2,349 60
	404			280 00		365 00		334		
1168	109	" 24.	" 25.	80 00	9	60 00	" 24.	110	Atlantic	6,000 00
					10	60 00	" 24.	110	Peabody	6,000 00
1179	25	May 31.	June 3.	18 00	11	28 00	" 30.	25	Washington	1,958 00
	538			378 00		513 00		579		
936	40	Moved.	June 15.	27 20	Over.	135 00	Surplus.			
				405 20						
1199	16	June 11.			12	14 00	June 11.	16	Citizen's	1,253 12
1221	15	" 20.			13	14 00	" 21.	15	People's	1,174 80
1237	10	" 27.	June 28.	25 00	14	9 00	" 27.	10	Potomac	783 20
1238	13	" 27.	" 27.		15	11 00	" 27.	13	People's	1,018 16
1276	11	July 11.	July 1.		16	11 00	July 12.	11	Consolid'd	861 52
1286	32	" 15.	" 12.	57 00	17	32 00	" 15.	32	City	256
	675			487 20		604 00		676		47,713 92

The defendant then called GEORGE B. COALE, who testified as follows:

I was out of town at the time of the fire of 18th July, 1870. Immediately after my return to Baltimore, which was a week after the fire, Mr. James Hooper, the president of the Baltimore Warehouse Company, said to me, "You get off devilish well. We can only call upon your policies for 24 bales of cotton. We can show you on our books everybody else is covered by special policies in the names of the own-
204 ers." A claim & proof of loss was afterwards presented to the Home Insurance Company, and was paid as soon as presented. There was some delay in making it up, in consequence of the necessity of first ascertaining the amount of the salvage. After the sale of the property which had been saved, Mr. Max Affelder, an accountant, was employed, I presume by the underwriters, to make a distributive account of the salvage.

The defendant then gave in evidence the following claim & proof of loss:

BALTIMORE, *Sept. 30th*, 1870.

The Baltimore Warehouse Company hereby claim of the Home Insurance Company of New York, loss under policy 1542, of July 18th, 1870, as follows, viz:

21	bales of cotton	to A. D. McLeod	$1,862 25
4	do.	do. to W. B. Hooper	320 97
			$2,183 22

CR.

By proceeds of share of unidentified cotton, as per act. of adjuster	$171 56		
" proceeds of 3 bales, less salvage exp's	140 94	312 50	
			$1,870 72
Insured in Home Ins. Co. $20,000, pays	$1,247 15		
do " Associated F. I. Co. 10,000 "	623 57	1,870 72	

BALTIMORE, *Oct. 5th*, 1870.

Before me, the subscriber, a justice of the peace in and for the city of Baltimore, personally appeared James B. Edwards, secretary of the Baltimore Warehouse Company, and made oath in due form of law that the foregoing is a just and true account of the loss on twenty-four bales
(24 bales) of cotton destroyed by fire in the State tobacco-ware-
205 house No. 2, on the eighteenth day of July, 1870; that there was no other insurance on said cotton except that by a policy of $10,000 in the Associated Firemen's Ins. Co. of Baltimore, as set forth in the above account; that said fire originated from the bursting of a boiler in the Maryland Steam Sugar Ref. Co., in the neighborhood; and that the said company has really and by misfortune, & without fraud or evil practice, sustained the loss set forth in the above account.

GEO. F. THOMPSON, *J. P.*

We hereby certify that we have paid insurance on twenty-one bales cotton, stored in our warehouse, on O'Donnel's wharf, on the day of its burning, (July 18th,) 1870; said cotton being insured under policies held by us, viz, No. 1542 of the Home Insurance Company of New York, for $20,000, and the Associated Firemen's Insurance Company of Baltimore, for $10,000; said cotton held for account of—

A. D. McLeod & Co., 21 bales, 9,932 lbs. @ 18¾c.		1,862 25	
W. B. Hooper, 4 " 1,735 lbs. @ 18½c.		320 97	
			$2,183 22

(Original.)

Certificates of weights and valuation on day of fire, herewith.
Baltimore, Aug't 6th, 1870.

JAMES HOOPER, *Pres't.*

[W. H. & CO. SEAL.] JAMES B. EDWARDS, *Sec.*

Barnes, public weigher, No. 59 South Gay street, certifys to
206 the following weights, marks, and numbers of (21) twenty-one bales of cotton weighed for J. J. Biggs:

BALTIMORE, *April 26th*, 1870.

Mark.		
B. L. K.,	547, 557, 430, 543, 635, 493, 621, 510, 575, 550, 10 b. c..	5,461
H. O.,	342, 447, 540, 307, 415, 362, 416, 7 b. c.	2,829
J. P. L.,	511, 371, 373, 387, 4 "	1,642
		9,932

R. M. BARNES,
Per. DALL.

A. D. MCLEOD, *Baltimore.*
B. M. PRIVETT, *Goldsboro', N. C.*

OFFICE OF A. D. McLEOD & CO.,
COTTON FACTORS AND GENERAL COMMISSION MERCHANTS,
S. W. COR. CHEAPSIDE AND WATER ST.,
Baltimore, Md., Aug. 6, 1870.

That is to certify that to the best of our knowledge and belief, based on the representations of the owners, the lot of 21 bales of cotton stored with the Balto. Warehouse Co., and destroyed by fire on 18th July, 1870, would grade average low middling.

A. D. McLEOD & CO.

4 bales Arkansas cotton, weighing g. 1,934 lbs.
2 bales low middling.
2 " good ordinary.

{ F. L. BRAUNS & CO., AUG. 4, 1870, BALTIMORE. } J. BICKEL.

207 BALTO., *July 20th*, 1870.

Balto. Warehouse Co. to Wm. B. Hooper, Dr.

For cotton insured by your company in tobacco-warehouse No. 2, and destroyed by fire on 18th inst., weighing as follows, viz: 3 bales—587, 663, 485=1735# at 18½c.....	320 97
Less 1 % int.....	3 21
	317 76

Received payment.

WM. B. HOOPER.

[2-cent. int. rev. stamp.]

BALTIMORE, MD., *August 2d*, 1870.

We certify that low middling cottons were worth on the 18th July, 1870, (the day of the late fire,) eighteen and three-quarter (18¾) cents per pound.

RHETT & SMITH,
Cotton-Brokers.

I hereby certify that, to the best of my knowledge and belief, the value of low middling cotton in this market on the 18th day of July, 1870, was 18½ to 18¾ cts. per pound.

THOS. S. BLUMMER, *Broker.*

BALTIMORE, *Aug. 3d*, 1870.

208 C. V. WAGNER & CO., COTTON-BROKERS,
No. 71 Exchange-Place, Baltimore, Aug. 3rd, 1870.

We certify that, to the best of our knowledge & belief, the value of low middlings cotton in this market was eighteen & three-quarter cents (18¾c.) on the 18th day of July, 1870.

C. V. WAGNER & CO.

BALTO., *Aug. 3d*, 1870.

The said witness, Coale, further testified, upon the payment of the loss as so shown a receipt was taken as follows:

$1,247.15. BALTIMORE, *Oct. 10th*, 1870.

Received of the Home Insurance Company of New York, by the hand

of Geo. B. Coale & Morris, agent, the sum of twelve hundred & forty-seven $\frac{15}{100}$ dollars, being in full of all claims and demands for loss and damage by fire on the eighteenth day of July, 1870, on 24 bales cotton, paid to A. D. McLeod & Co. & W. B. Hooper, insured by policy No. 1542, issued at the Baltimore agency of said company.

Witness my hand and seal the day and year first above written.

JAMES HOOPER, *Pres.* [L. S.]

Amount of claim, $1,247.15.
Interest, $.
Exchange, $.
Draft, 1,247-15.

209 The payment was made by the following check:

$1,247.15. HOME INSURANCE COMPANY OF NEW YORK,
Baltimore, October 10th, 1870.

Pay to the order of James Hooper, pres't Balto. Warehouse Co. twelve hundred & forty-seven $\frac{15}{100}$ dollars for loss and damage by fire on the 18th day of July, 1870, to property insured under policy No. 1542 of Baltimore agency.

To the HOME INSURANCE COMPANY, *New York.*

GEO. B. COALE & MORRIS, *Agents.*

(On the face:) Paid Oct. 12. Home Insurance Co.

Which said check is thus endorsed, to wit:

Third National Bank, N. Y., Oct. 12, 1870. Paid.
JAS. B. EDWARDS, *Sec't'y.*

Pay C. N. Jordan, esq., cashier, or order, for collection.
J. W. GUEST, *Cash'r.*

The genuineness of the endorsement of the Baltimore Warehouse Company on the said check was admitted by the plaintiff.

The said Coale further testified: Mr. Edwards told me at the time of said payment that none of the companies who had issued the special policies claimed that the Home and Associated policies were bound to contribute to the loss on the property specifically covered by Hough,
210 Clendening & Company's policies. We both agreed that the claim was preposterous and absurd, and could not be sustained; but he said then, "I am not going to let go your policies till it is decided." So when I paid the $1,247.15, Mr. Hooper said he would only give me a receipt for that sum, because the question of contribution was open, & he would not shut himself off from making claim against the defendant for it, and Edwards refused to give up the policy. At Mr. Hooper's request the words "property insured by policy 1542," in the printed form of receipt, were struck out, and "24 bales of cotton" substituted. I inserted those words with the express understanding with Mr. Hooper, the president, and Mr. Edwards, the secretary, that by so doing I did not, as agent, acknowledge an open claim against my company under the policy. The question of contribution was left open. He & I both so regarded it. I denied any liability for contribution, and they did not say they thought there was any, but insisted on keeping the policy lest such a claim should be enforced by the special insurers. I had frequent conversations with Mr. Carey. They were nothing more than friendly discussions of questions of insurance, interesting to us as insurance men.

These conversations had no official character, nor was I acting as agent when I was engaged in them. At the time of the before-mentioned settlement and payment of the loss upon the 24 bales, nothing was said of any claim against the Home Insurance Company because of there having been two policies taken upon the same 110 bales. Shortly
211 after the decision of the court of appeals I was shown the 4 adjustments of Capt. Clark. I told Mr. Cushing, the president of the Associated Firemen's Co., from the first, that if it was possible I would not submit to the decision of the court of appeals. I told him I was liable if that decision was correct. The question was whether the same alternative of resistance was open to his own company, a Maryland one, and his counsel was called in for the purpose of determining it. Mr. Hooper on one occasion came in and told me about a supposed short insurance, that the loss was greater than $12,000 on the 220 bales covered by the two policies of 110 bales each. I convinced him that salvage would make him all right. About the same time, he told me the Peabody and Atlantic companys were making a question of double insurance, but he said there could be nothing in it. He said, "However, if they succeed, I shall come back on you." Mr. Hooper never did make out or present a claim against the Home Insurance Company on that account. He afterwards told me he had settled with the Atlantic because he feared that company would fail. I told Barney that the defendant was liable for a certain amount, but I meant on the theory that the decision of the court of appeals was correct. I made out statements to show to what extent the defendant was liable if 109 bales were not covered by specific policies.

Upon cross-examination the said Coale further testified:

212 My first interview with Mr. Hooper probably occurred a week or 10 days after the fire. Soon after that interview the subject of contribution was mooted. I expressed my opinion very decidedly to Mr. Hooper at that time that the claim of the companies issuing the special policies to contribution was untenable, & said that the defendant was not liable for contribution. I did give a written opinion upon the subject to that effect at the time. I heard from Mr. Carey, soon after the fire, of the two 110-bale policies. This was before the date of the payment of the loss of 24 bales, but the question of the effect as the foundation for any claim against the Home Insurance Company was not mentioned or suggested between Mr. Hooper and myself at that time. I don't think Mr. Hooper at those interviews used the expressions "blanket policy," or to "cover any loss he mightn't see and couldn't see." It was subsequent to that time that he commenced to tattle in that way. The only future claim then deemed possible by either of us—by myself certainly, and Mr. Hooper's words were such as to indicate that such was his impression also—was the claim of contribution. He had told me from the beginning that the question of contribution was made by other companies & was reserved by him as against the defendant. The claim of the Atlantic & the Peabody, that they were only on the same 109 bales, was known to me from the beginning. I did, under a general protest
213 against the decision of the court of appeals, say to Barney, I (meaning the defendant) cannot get off for less than $13,000. I have no doubt I said what Barney attributed to me.

I did at one time, under the belief that we were concluded by the decision of the court, give it as my opinion that under it we should have to pay an amount which I stated, after figuring upon the data presented in the adjustments of Captain Clark. I cannot now remember what my theories and calculations were. It is possible I made several calcula-

tions. I made a memorandum, at the time, of what I said to Mr. Hooper in regard to the receipt, upon the back of the receipt. (The memorandum being called for, was produced and read from the back of the receipt, and was as follows:)

Memorandum.

BALTO., *Oct. 11th*, 1870.

I inserted the words "on 24 bales, paid to A. D. McLeod & Co. & W. B. Hooper," in place of "to the property," with the expressed understanding with Mr. Hooper, the president, and Mr Edwards, the secretary of the warehouse company, that by so doing I did not, as agent of the company, acknowledge an open claim against the company under the policy.

GEO. B. COALE.

I sent the receipt with the memorandum upon it to the office of the
214 company in New York. I remember I did tell Mr. Carey I did not see how he could go back upon the face of the policy, or deny that it covered the full 110 bales. My conversations with him were simply friendly discussions. Mr. Hooper made no claim for the 109 bales. I did not deny the liability for the 109 bales, because the claim was not made. The statement T. D. No. 2 was made upon my application for information; it was not made for the purpose of supporting any theory of mine.

BERNARD HOUGH, the next witness called by the defendant, testified as follows, (subject to exception reserved by court's consent:)

I was a member of the firm of Hough, Clendening & Company, & transacted the chief part of the business with the Baltimore Warehouse Company. At that time Mr. J. Hooper was president, and Mr. Edwards secretary of the company. The Baltimore Warehouse Company had been at first placing insurance, but subsequently told me they would expect or require us to take out our own insurances. We had not before that obtained any insurances. Afterwards it was our custom, at or about the time of deposite of cotton, to take out a policy upon the number of bales we had deposited or were about to deposite. We employed and paid the broker who got the insurances. Most of our business was done through Mr. Luckett. We designated all our cotton by one uniform mark; I think it was X Q. We had no special mark for any parcel. I think there was an understanding that we might withdraw any cotton by substituting
215 other bales, but we could not lessen the security; the warehouse co. kept the security on all. In such cases we relied on our old insurances as covering the substituted bales. I can't say whether we actually did withdraw a lot or not. All our cotton was subject to the company's lien for advances. They required us to insure all the cotton on which they advanced. I have no recollection of the circumstances attending the issue of the two 110-bale policies. We kept no record of insurances. Mr. Edwards, the secretary, & our broker usually gave us notice of any lapsing. We depended on them to keep us informed as to when our insurance was short. There was no agreement on the part of the warehouse company ever to advance beyond the amount of the insurance. After the insurances were made the policies were brought to us by the broker. I then deposited them with the secretary of the warehouse company. I have no recollection that anything more took place when I

brought the two policies of 110 bales than on other occasions when I carried policies to the warehouse company. I have no recollection of what occurred. I recollect that once Mr. Hooper, or some one else connected with the warehouse company, told me some 40 bales of cotton had been brought up to the warehouse from elsewhere. The cotton was stored in separate lots according to the receipts, which had their numbers, so that if we called for any particular lot it would be delivered.

On cross-examination the witness said: It was our custom,
216 whenever we were about to get an advance on a deposit, to get out a policy on the number of bales deposited & on which the advance was to be made.

Mr. SIMONS, president of the People's Insurance Company, called by the defendant, testified that said company had a policy for F. L. Brauns & Co., & had settled it, & had paid Brauns & Co. their whole loss on the cotton deposited by said Brauns & Co., and covered by their policy, though not the full amount of the policy.

Mr. PRINCE, another witness called by the defendant, testified that he was, in 1870, a member of the firm of Elliott Brothers. The three insurances on said firm's cotton were effected by me. The policies did not mention any number of bales. My recollection is that only one of the policies, the Potomac, and that to the amount of $10,000, I think, was made payable to the warehouse company. The full value of the cotton lost was insured. We paid our note to the warehouse company for the amount of advance to us on the 20th of June, 1870, before the fire. We had 111 bales in the warehouse at the time of the fire.

The said FOOTE, examined by the defendant, testified that the custom had been when cotton was taken away to substitute other equivalent cotton, without change of insurance. Being asked to state what cotton or other property of Hawkins, Williamson & Company, Elliott
217 Brothers, and F. W. Beck & Company, respectively, was in store at the time of the fire, and what advances had been made thereon by the plaintiff, and whether or not said advances had been paid back to the plaintiff by the said depositors, and, if paid, when so paid, the said witness prepared from the books of the said warehouse company, the following three statements, which, by consent, were read to the jury as evidence of the facts therein stated:

HAWKINS, WILLIAMSON & CO.

	Lot.	Date certificates.	Bales.			
	97	Oct. 4, 1869	5			
	151	" 18, "	1			
	245	Nov. 8, "	20			
	270	" 11, "	5			
	283	" 13, "	1			
	321	" 20, "	6			
	521	Dec. 16, "	6			
	545	" 20, "	5			
	582	" 24, "	11			
	910	Feb'y 25, 1870	16			
	1036	Aprl. 4, "	25			
	1115	" "	1			
	1055	" 11, "	21			
	1072	" 14, "	1			
	1079	" 16, "	4			
	1084	" 18, "	15			
	1123	May 2, "	16			
218	1127	" 5, "	3	$3,000 paid July 23,	on 50 bales.	
	1149	" 16, "	21	$4,800 " Aug. 17, 2, 922 35	on 66 bales.	
	1167	" 23, "	31	12,000 " Oct. 6, 1, 877 65		
	1163	" " "	93	" Sept. 10, 2, 922 27	on 150 bales.	
	1169	" 24, "	12	13, 1, 744 56		
	1228	June 22, "	4	Oct. 6, 7, 333 17		
	1266	July 7, "	5			
	In store at time of fire		328			

When due: July 23; Aug. 9; " 18

Date note.

FROM STOREKEEPER'S BOOK, ELLIOTT BROTHERS.

Lot.	Date certificate.	Bales.
155	Oct. 19, 1869	17
169	" 21,	12
196	" 29.	12
496	Dec. 10,	4
511	" 13,	4
524	" 15,	4
594	" 28,	30
614	" 31,	12
690	Jan'y 14, 1870	4
734	" 22,	4
758	" 25,	4
993	Mch. 18,	4
In store date fire		111

Advances, 1870: Mar. 25, 165 bales, 90 d'ys, due June 23–26, paid June 25th.

In store of A. D. McLeod at date fire:

219 Lot 1137, 21 bales cotton; certificate dated May 10. July 16 advance, 1,480$, due Sept. 17, '70; paid Aug't 5, 1870

F. W. BECK & CO.

No. certificates.	Date certificates.	No. hhds.
535	Dec'r 17, '69	3
670	Jan'y 10, '70	3
680	Jan'y 12, "	1
913	Feb'y 26, "	10
1081	Apl. 18, "	6
1215	June 16, "	6
1242	June 29, "	3
In store at date of fire		32 hhds.

Date note.	Amt. note.	Paid on a/c.	Balance.	Due.
1870.				
April 16	$1,000	300	700	July 18
22	1,300	616	684	24
June 17	750	$	750	Sept. 18
29	750	$	750	Oct. 2
June 2	1.350	$	1,350	Sept. 2
			$4,234	

All paid on 23 July, 1870.

The plaintiff then further proved by Mr. Prince that he was familiar with the mode of transacting business at the warehouse co., & it was as follows, viz:

A party desiring to store mdse. with the Balto. W. H. Co., in order to obtain an advance thereon, applies at the office of the co. for an order addressed to the storekeeper at any one of their warehouses to receive said goods. On this order will be designated lot No. , number of pkgs., marks, &c. Upon receipt of the goods, the storekeeper issues his "ticket," giving also lot No. , marks, &c., and each lot is kept separate in the warehouse, and is designated by a parchment tag, with lot No. on it. When cotton is stored, these tags are placed on the end bale of each row, and give, in addition to lot No. , the number of bales in the row & mark on each.

Storekeeper's ticket is exchanged at office of Co. W. H. rec't, the number of which corresponds with lot No. , & gives all other particulars. This receipt, endorsed by depositor, is lodged w'h co. as collateral for advance.

When mdze. is withdrawn, (in whole or part,) the depositor obtains from office of the co. an order to deliver, addressed to storekeeper, & designating the goods by lot No. , marks, &c., he first settling for advance.

The co. effect insurance in all cases where advance is made, or have inserted on policy "loss, if any, payable to W. H. Co.," if they accept a transfer of insurance.

And the witness produced with testimony the four exhibits here following, which are forms of the order to receive goods, the warehousemen's receipt, the form of warehouse receipt issued by the company, & the delivery order given when goods are to be taken out.

221 *Order to receive.*

Lot No. 5020.] BALTIMORE, *June 8th*, 1874.

BALTIMORE WAREHOUSE CO.

Mr. JAMES STUART: Please receive in store No. 10, Union dock, from Elliott Bros., one hundred (100) bales cotton:

Marks and numbers.

M. B. 37 bales.
E. G. 19 "
N. 14 "
O. K. $\frac{30}{100}$ "

S. A. F.,
Secretary.

No. .] *Storekeepers' ticket.* [Lot No. 5020.

BALTIMORE, *June 8th*, 1874.

BALTIMORE WAREHOUSE CO.

Received at Warehouse No. 10, Union dock, from Elliott Bros., one hundred (100) bales cotton. Marks an' numbers.

Not negotiable.

Storekeeper.

This ticket must be exchanged at company's office for a warehouse receipt.

BALTIMORE WAREHOUSE COMPANY.

Notice.—The property mentioned in this receipt is held by this corporation as bailees only, and is not insured by this corporation.

Incorporated 1867.

No. 5020.] BALTIMORE, , 18 .

222 Marks. Received by the Baltimore Warehouse Company in store at No. ,
from ,

to be delivered according to the endorsement hereon, but only on the surrender and cancellation of this receipt, and on the payment of the charges payable thereon.

President.
Secretary.
Registrar.

(Printed in vignette:) Act of incorporation, passed 1867.

Section 10. The receipts, warrants, or warehouse certificates issued by this corporation shall in all cases be signed by the president or vice-president and secretary of the corporation, and attested by the corporate seal, and may be transferred by endorsement thereof, and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares, and merchandise therein specified, so

far as to give validity to any pledge, lien, or transfer made or created by such person or persons; but no property shall be delivered except on surrender and cancellation of said original receipt, warrant, or certificate.

(Endorsed:) W. H. rec't 5020.

BALTIMORE, 187 .

223 Deliver to the order of the within-described merchandise.
Witness:

Received of Baltimore Warehouse Co.

Date.	Packages.	Brand.	Article.	Signature.

No. 7057.] *Order to deliver.*

BALTIMORE, , 187 .

BALTIMORE WAREHOUSE Co.

M. storekeeper No. please deliver to order of M.

marks and numbers.	
Lot 5020.	
"	
"	

Secretary.

No further evidence being offered by either party, the plaintiff thereupon presented the following prayers, and prayed the court to instruct the jury accordingly.

24 The plaintiff, by its counsel, prays the court to instruct the jury, that—

1st. They are at liberty, from all the circumstances of the case, to find that the defendant waived the right to require preliminary proof, & if they so find, the want of preliminary proof is no bar to the plaintiff's right to recover.

2nd. If they believe from the evidence that before James Hooper presented to George B. Coale the preliminary proof on which the defendant paid the money from which a receipt is endorsed on its policy, said Hooper told said Coale that he reserved the right to make any claim in addition to that embraced in said proof, to which under said policy the plaintiff might be entitled, & that said Coale then denied that the defendant was liable for any further loss, not for want of preliminary proof in reference thereto, but because the terms of its policy did not cover any further loss; & shall further find that, at the time of said payment, the form of receipt ordinarily required by the defendant for payment of a loss under a policy was altered by said Coale, & the receipt which is on said policy was written by him, & said policy was retained by said

Hooper for the purpose then expressed by him to said Coale of enabling the plaintiff, if necessary to make claim for further loss, & that said facts were by said Coale, reported to the defendant & by it approved, then there was a waiver by the defendant of its right to require preliminary proof of further loss & the want of preliminary proof thereof is no bar to the plaintiff's right to recover.

225 3d. If they believe that the agreements which have been offered in evidence extending the time within which suit might be brought on the policy of the defendants were made for the purpose, on the part of the plaintiffs & defendants, of procuring a decision of the question of contribution involved in the case of Hough & others against the People's Fire-Insurance Company, the record of which has been offered in evidence, & that, after the decision of the court of appeals in said case, said Coale admitted to the president of the plaintiff that, on the theory of said decision, the defendant was liable to the plaintiff for $13,000 for the losses & damages resulting from the fire mentioned in the agreed statement of facts, such admission is evidence from which the jury may find that the defendant had waived the right to require preliminary proof.

4th. That the policy of the defendant covered all of the property mentioned in the agreed statements of facts, which was in the warehouse & destroyed by the fire therein mentioned; & if the jury find that the defendant has waived the right to require preliminary proof, the plaintiff is entitled to recover for all loss of, or damage to, said property occasioned by said fire, less the proportionate part thereof properly chargeable in adjustment of loss to the other insurers mentioned in said statement of facts, & less, also, the money paid by the defendant therefore, provided said balance does not exceed the sum of $20,000.

226 PLAINTIFF'S 5TH PRAYER.

(Granted.)

If the jury shall find, from the evidence, that Mr. Hooper, the president of the plaintiff, at the time of receiving from the defendant the moneys receipted for on the said policy for the losses mentioned therein, was requested by Mr. Coale, the defendant's agent, to surrender the said policy, but refused to do so & notified Mr. Coale that he retained the said policy in order to assert against the defendant thereafter any claims thereunder not then known to him, but which might thereafter appear, & that said Coale accordingly left said policy in the hands of Mr. Hooper, & wrote & signed the receipt written thereupon, & altered the usual receipt of the company to conform thereto in the manner testified to by said Coale & sent to the defendant a copy of said receipt as altered, with the memorandum thereon proven by said Coale;

And if the jury shall further find that said Coale did not, nor did the defendant make any objection to the retention of said policy by said Hooper for the purpose aforesaid, but, on the contrary, assented thereto, & that said Coale simply denied & protested that the defendant was not liable & would not & did not recognize or concede its liability under the terms of said policy for any other losses than those paid and receipted for as aforesaid;

227 And shall further find that the agreements for the waiver of the 13th condition of said policy, which have been given in evidence, were executed by the defendant for the purpose of giving to the plaintiff a continuing right to assert by suit its claims reserved by Mr. Hooper, as aforesaid, pending litigation in the State courts, involv-

ing the legal principles on which the respective rights of the parties under said policy might depend, & that no suggestion or intimation of any defense to said claims on the ground of defect or failure of preliminary proof or notice under the 9th condition of insurance was made by defdt. or its said agent, until a short time before the institution of this suit, & after ineffectual efforts between the parties to settle the claims of the plaintiff under said policy upon their merits, then—

The jury are entitled, from such facts, with the other facts in the case, to find that the defendant waived the compliance by the plaintiff as to such reserved claims, with the 15th paragraph of the 9th of the conditions of insurance attached to the policy.

And if the jury find such waiver as aforesaid, then the failure to offer such preliminary proof is no bar to the plaintiff's right to recover in this suit.

And the defendant at the same time presented the following seven prayers, and prayed the court to give to the jury the several instructions therein asked for:

228 DEFENDANT'S PRAYERS.

(Rejected.)

1. The policies obtained by Hough, Clendening & Company upon their cotton, and made payable to the Baltimore Warehouse Company, being for a different assured, were upon a different interest from that covered by the policy now in suit; and the latter is not bound to contribute to any losses for which the former are liable.

(Rejected.)

2. If the jury find that, in the course of dealing between the Baltimore Warehouse Company and its depositors, the latter, before receiving advances upon goods stored, were required to insure the same to an amount not less than the sum advanced, and that for the purpose of securing the said warehouse company the policies in such cases were made payable to the warehouse company, and were delivered to them at the time of procuring such advances; and shall further find that the two policies of $6,000 each, issued on the 24th day of May, 1870, by the Atlantic and Peabody insurance companies, were obtained by Hough, Clendening and Company, with knowledge on the part of said companies that they were intended to secure the warehouse company for advances, and that Hough, Clendening and Company then took them to the said warehouse company, and that the latter received them without notice to the said warehouse company of the cir-
229 cumstances under which they were obtained; and that upon the faith thereof the said warehouse company, their officers believing that each policy insured the full quantity mentioned in the same, and that the two together covered 220 bales, thereupon advanced to Hough, Clendening and Company a sum of money larger than would have been advanced but for the existance of both said policies and the belief that were independent of one another, then the said Atlantic and Peabody companies were respectively bound as between them and the said warehouse company by the representations contained in the respective policies, and could not limit their responsibility to a joint responsibility for 110 bales of cotton, but were each liable as separate insurers to the amount of 110 bales each.

(Rejected.)

3. If the jury shall find from the evidence that, from the time of the fire of July 18th, 1870, until after the 25 of June, 1872, no claim or de-

mand was made by the plaintiff on the defendant for any loss by reason of said fire, except for the 24 bales of cotton mentioned in the written proofs and settlement offered in evidence, and for an alleged liability of the defendant under the policy declared on for contribution with the special policies set forth in the agreement filed in this case, then there is no evidence before the jury from which they can infer a waiver of preliminary proof on the part of the defendant in regard to any other claim under the policy declared on, except the claim
230 for contribution with the said special policies.

(Rejected.)

4. By the 9th condition of the policy upon which this suit is brought, it was made necessary for the insured, after the fire, forthwith to give notice of their loss to the defendant, and as soon as possible thereafter to deliver as particular an account of their loss and damage as the nature of the case admitted of, and to accompany the same with proof as therein provided; and no acts or declarations of the agent, Mr. Coale, subsequent to the 10th of October, 1870, are admissable to shew waiver by the defendant of said condition.

(Granted.)

5. In determining the question whether there has been a waiver of preliminary proof, the jury cannot consider declarations of the defendant's agent, Coale, made to parties other than the officers or agents of defendant, denying the defendant's liability to the plaintiff for any loss whatever beyond that of the 24 bales of cotton which were included in the settlement offered in evidence.

(Rejected.)

6. There is no evidence in this case of any waiver on the part of the defendant or of its agent in such manner as to bind them of notice of loss and preliminary proof as to the 109 bales of cotton alleged to have been left without specified insurance by reason of the Atlantic
231 and Peabody policies of $6,000 being upon the same 110 bales.

(Rejected.)

7. That if the jury shall find from the evidence and under the instructions of the court that at the time of the fire of July 18, 1870, there were 109 bales of cotton deposited by Hough, Clendening & Co. in the warehouse of the plaintiff which were not covered by any of the special policies taken out by said Hough, Clendening & Co. & made payable to plaintiff, and that the plaintiff had notified the said Hough, Clendening & Co. that they themselves must insure all cotton deposited by them; and if the jury shall find that there was, on the part of the defendant, a waiver of preliminary proof in regard to the loss on said 109 bales, & that the plaintiff is entitled to recover on account of said loss, then the amount the said plaintiff is entitled to recover on account of said 109 bales, should be two-thirds of plaintiff's own loss by reason of the damage of said bales by said fire; & in order to ascertain the plaintiff's own loss on said 109 bales, the salvage thereon received by the plaintiff & the amount due on all the said special policies should be deducted from the total amount advanced by the plaintiff to the said Hough, Clendening & Co.

And the court thereupon rejected the said first, second, third, fourth, sixth, and seventh prayers of the defendant, and each of them, and refused to give to the jury any of the instructions therein severally
232 asked for, and granted the said fifth prayer of the plaintiff, and instructed the jury in the words thereof, also granting the said fifth prayer of the defendant and rejecting the said other prayers of the plaintiff, and gave instructions of its own in the following words:

COURT'S INSTRUCTION.

If the jury shall find from the evidence in this case that, at the time of the fire of July 18th, 1870, there were 109 bales of cotton in the warehouse of plaintiffs deposited by Hough, Clendening & Co., which were not covered by any of the special policies taken out by said depositors; and that on said 109 bales the plaintiffs had made advances, which were unpaid at the time of the fire; and shall further find for the plaintiff as to the waiver of preliminary proof, under the 5th prayer of the plaintiff, which is granted by the court, then the plaintiff is entitled to recover in this action for the $\frac{2}{3}$ of all loss or damage to said 109 bales to the extent of its advances as aforesaid.

And if the jury shall find from the evidence that there was other cotton deposited by depositors in pltff.'s warehouse, and which was covered by special policies of insurance given in evidence in this case, and upon which pltff. had made advances, then the said pltff. is entitled to recover also for the $\frac{2}{3}$ of all loss or damage to said cotton, to the extent of its advances on the same, less the amount which
233 the jury may find to be due from said special policies made payable to the said pltff., each of said special policies contributing to the loss on the cotton insured by it with the general policies held by the plaintiff.

And the defendant thereupon prayed leave to except to the said rejection by the court of the said first, second, third, fourth, sixth, and seventh prayers of the defendant, and to the rejection of each of them, and to the refusal of the court to give to the jury the instructions in said last-mentioned prayers severally asked for, and also to the granting of the said fifth prayer of the plaintiff, and to the instruction given to the jury in accordance therewith and also to the court's instructions, and severally to each proposition in said instruction contained; and that the court would sign and seal this its bill of exceptions, according to the form of the statute in such case made and provided, and which is accordingly done this 21st day of April, A. D. 1874.

WILLIAM F. GILES. [SEAL.]

4th exception.

In the circuit court of the United States, for the district of Maryland:

THE BALTIMORE WAREHOUSE COMPANY,
vs.
THE HOME INSURANCE COMPANY OF THE CITY of New York.

234 At the trial of this cause, after the evidence had been produced and proceedings had mentioned in the said preceding three bills of exception of the defendant, which by reference are hereby made part of this bill of exceptions, the court further instructed the jury as follows:

COURT'S INSTRUCTIONS.

If the jury shall find from the evidence in this case that, at the time of the fire of July 18th, 1870, there were 109 bales of cotton in the warehouse of plaintiffs deposited by Hough, Clendening & Co., which were not covered by any of the special policies taken out by said depositors; and that on said 109 bales the plaintiffs had made advances which

were unpaid at the time of the fire; and shall further find for the plaintiff as to the waiver of preliminary proof, under the 5th prayer of the plaintiff which is granted by the court, then the plaintiff is entitled to recover in this action for the ⅔ of all loss or damage to said 109 bales to the extent of its advances as aforesaid.

To the giving to the jury of the said instruction herein-above set forth, the defendant prayed leave to except, and that the court would sign this its bill of exceptions.

And the court also further instructed the jury, as follows:

235 And if the jury shall find from the evidence that there was other cotton deposited by depositors in the pltff.'s warehouse, and which was covered by special policies of insurance given in evidence in this case, and upon which pltff. had made advances, then the said pltff. is entitled to recover also for the ⅔ of all loss or damage to said cotton to the extent of its advances on the same, less the amount which the jury may find to be due from said special policies made payable to the said pltff., each of said special policies contributing to the loss on the cotton insured by it with the general policies held by the plaintiff.

The foregoing instructions, together with the instructions expressed in the said prayer of the plaintiff, and in the said fifth prayer of the defendant (mentioned in the third bill of exceptions) were the only instructions given to the jury.

And the defendant prayed leave to except to the giving to the jury of the said instructions hereinabove last stated and set forth, as well as to the said other instructions in this bill of exceptions first stated, and that the court would sign and seal this its fourth bill of exceptions, according to the form of the statute in such case made and provided, and which is accordingly done this twenty-first day of April, A. D. 1874.

WILLIAM F. GILES. [SEAL.]

236 Whereupon the said Home Insurance Company, by their attornies aforesaid, in open court here, sued out of the circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding that the judgment aforesaid, so as aforesaid rendered, with all things thereunto relating, be transmitted to the Supreme Court of the United States, to be held at Washington on the second Monday in October next, which said writ is as follows, to wit:

237 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the fourth circuit in and for the district of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, between the Baltimore Warehouse Company, plaintiff, and the Home Insurance Company of New York, a manifest error hath happened, to the great damage of the said Home Insurance Company of New York, as by its complaint appears:

We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at

Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

238 Witness the honorable Morrison R. Waite, Chief-Justice of our Supreme Court, the twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Issued the 20th day of July, 1874.

JAMES W. CHEW,
Clerk Circuit Court.

239 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Baltimore Warehouse Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court for the fourth circuit in and for the Maryland district, wherein the Home Insurance Company of New York is plaintiff in error and you are defendant in error to show cause, if any there be, why the judgment rendered against the said Home Insurance Company of New York, in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in this suit.

Witness my hand and seal this twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

WILLIAM F. GILES. [SEAL.]

Service acknowledged this day of 18th August, A. D. 1874.

WALLIS & THOMAS,
Atts. for Appellee.

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241 In pursuance whereof, and according to the statute in such case made and provided, a record of the judgment aforesaid, with all things relating thereto, together with the said writ of error annexed, is hereby transmitted to the said Supreme Court of the United States accordingly.

Appeal bond.—Filed July 20th, 1874.

Know all men by these presents that we, George B. Coale and James Carey Coale, are held and firmly bound unto the Baltimore Warehouse Company in the full and just sum of thirty-three thousand two hundred dollars, to be paid to the said Baltimore Warehouse Company, its certain attorney or assigns, to which payment well and truly to be made and done we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately in the circuit court of the United States for the fourth circuit in and for the district of Maryland, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord

eighteen hundred and seventy-three, in a suit depending in said court between the Baltimore Warehouse Company, plaintiff, and the Home Insurance Company of New York, defendant, a judgment was
242 rendered (on the sixth day of June, 1874,) in favor of the said plaintiff, from which said judgment the said defendant has filed a writ of error in said court to reverse the said judgment to the Supreme Court of the United States to be held at Washington on the second Monday in October next.

Now, the condition of the above obligation is such that if the said Home Insurance Company of New York shall prosecute the said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

GEO. B. COALE. [SEAL.]
JAS. CAREY COALE. [SEAL.]

Sealed and delivered in presence of—

RICHD. B. POST.

(Endorsed:) Bond approved 20th July, 1874.

WILLIAM F. GILES.

I hereby certify that the aforegoing is a true copy of the record and proceedings of the cause aforesaid in the circuit court aforesaid.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court this second day of September, in the year of our Lord 1874.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 265. The Home Insurance Company of New York, plaintiff in error, vs. The Baltimore Warehouse Company. Maryland C. C. U. S. Filed 25th September, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 265.

THE HOME INSURANCE COMPANY OF NEW YORK

vs.

THE BALTIMORE WAREHOUSE COMPANY.

BRIEF FOR THE PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 265.

THE HOME INSURANCE COMPANY OF NEW YORK

vs.

THE BALTIMORE WAREHOUSE COMPANY.

BRIEF FOR THE PLAINTIFF IN ERROR.

I. Statement.

This action, instituted by the Defendant in Error in the Superior Court of Baltimore City, and afterwards removed into the Circuit Court of the United States for the District of Maryland, was brought upon a policy of Fire Insurance, set out in the Printed Record on pages 9 to 16. By this policy the Home Insurance Company insured the "*Baltimore Warehouse Company* against loss or damage by fire to the amount of twenty thousand dollars on merchandise, hazardous or extra hazardous, their own or held by them in trust, or in which they have an interest or liability, contained in that part of the State tobacco warehouse No. 2, used by them." A fire occurred on the 18th day of July, 1870, by which the warehouse was destroyed, with a large portion of its contents.

The Baltimore Warehouse Company, sometime between the 5th and 10th of October, 1870, presented to the Home Insurance Company a claim and proof of loss, which appear in the Printed Record, pp. 92–5. The loss so claimed, amounting to $1247.15, was promptly paid, as appears by the check on page 92 of the Printed Record, and receipt indorsed on the policy, record, page 16.

Besides the policy in suit, the Baltimore Warehouse Company had another policy in substantially the same form in the Associated Firemen's Insurance Company of Baltimore for $10,000.

At the date of the policy given by the Home Insurance Company and now sued on, 7th December, 1869, the Baltimore Warehouse Company under its charter, (Printed Record p. 24,) granted by the General Assembly of Maryland in the year 1867, was authorized to carry on the business of warehousemen and forwarders within the limits of the port of Baltimore, but was prohibited from buying or selling merchandise or other property, as dealers, or on commission. It was authorized to collect storage, wharfage and lighterage on goods deposited, together with the expenses incidental to the handling of them, and money advanced for such purposes; and for these charges a lien was given. No power was given it to lend money upon the security of the goods stored, or otherwise.

At January session 1870 an Amendment of the act of incorporation was obtained, (P. record 26,) enabling the Company also to make advances upon all goods received by or stored with it, or upon bills of lading, store-keeper's or inspector's certificates, delivery orders or other documents showing possession, and the powers of the Company were still further enlarged by an Act of the legislature, passed subsequently, amending the charter as before amended, authorizing it also to make loans upon negotiable paper, stock, &c., and to purchase and sell.

The course of business of the Warehouse Company, after the passage of these amendments of its charter, was as follows: When goods were stored with it, a receipt was in all cases given, of which the following is a specimen:

"*Notice.*

The property mentioned in this receipt is held by this corporation as bailees only, and is not insured by this corporation.

BALTIMORE WAREHOUSE COMPANY.

(Incorporated 1867.)

No. 805. BALTIMORE, *February 5th*, 1870.

Marks.
X Q

EXPENSES.

Storage 25c. per mo. ....
Labor.....
Cooperage, &c.,.
Gauging. ... ..
Weighing..... ..
Elevator.... ....
Commissions...
Advances.....

Received by the Baltimore Warehouse Company, in Store at No. 2 tobacco-warehouse, from *Hough, Clendenning & Co. thirty eight bales cotton*, to be delivered according to the indorsement hereon, but only on the surrender and cancellation of this receipt, and on the payment of the charges payable thereon.

JAMES HOOPER,
President.

[Seal of the Corporation.]

JAMES B. EDWARDS,
Secretary & Registrar.

Act of incorporation, passed 1867, section 10. The receipts, warrants or warehouse certificates issued by this corporation, shall in all cases be signed by the president or vice-president and secretary of the corporation, and attested by the corporate seal, and may be transferred by endorsement thereof: and any person to whom the same may be transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified, so far as to give validity to any pledge, lien or transfer made or created by such person or persons; but no property shall be delivered, except on surrender or cancellation of said original receipt or certificate."

Printed record p. 20.

When no money was lent to the depositor, he insured or not at his discretion. In the case of a loan, the borrower was always required to insure the goods *in his own name*, and the policy was either indorsed, or, as was the course generally pursued, the clause was inserted in the body of the policy "*loss, if any, payable to the Baltimore Warehouse Company.*" In such case also, the *Receipt* was indorsed thus:

"Deliver to the order of the within-described Merchandise.

Hough, Clendenning & Co."

and given back to the Warehouse Company, to be retained until the debt was paid.

At the time of the fire, the storehouse of the Warehouse Company contained 1452 bales of Cotton, besides a certain amount of tobacco and bark. Upon a good deal of this property money had been lent by the Warehouse Company; all of which was insured in various companies in the names of the several depositors or borrowers, to an amount fully sufficient to cover the value of the cotton, &c. destroyed or damaged. The only exception, if there be any, to this last statement is a certain lot of 109 bales of cotton, regarding which a distinct question arises, turning on special circumstances; and to *this* question in the case particular reference will be made hereafter.

One of the *Depositor* policies, which, as regards the present question, may be taken as an example of all, is on page 32 of the printed record. The material portion is as follows:

"By this policy of insurance the Peabody Fire Insurance Company of Baltimore, in consideration, &c. do hereby insure *Hough, Clendenning & Co.* against loss or damage by fire to the amount of six thousand dollars on 110 bales of cotton, their own or held by

them in trust, or on commission, or sold but not delivered, stored in tobacco warehouse No. 2, O'Donnell's wharf, now occupied by the Baltimore Warehouse Company.

Loss, if any, payable to the Baltimore Warehouse Co."

The proposition contended for by the Defendant in Error, and necessary to be established to entitle it to a recovery in this action, is that the policies of the *owners* of the cotton and the policies of the Warehouse Company constitute a case of double insurance, so that each set of policies is bound to contribute with the other set; and that, therefore, the policy sued on (every loss for which it is directly liable having been already adjusted and paid) is liable in this action to the extent of a contributory share of all the losses for which the owners' policies are liable.

On the other hand it is claimed, on behalf of the Home Insurance Company, that, as the policy which it gave insured the Baltimore Warehouse Company only, and as the other policies insured Hough, Clendenning and Company or other owners, the insured are not the same, nor are the interests the same; and that the clause in the Hough, Clendenning and Company policies making the loss if any *payable* to the Warehouse Company does not alter the interest insured, which is that of Hough, Clendenning and Company, nor qualify the loss, which is precisely the same, whether it be paid to the insured, or to any other person.

Secondly. Among the lots of cotton deposited by Hough, Clendenning & Co. were two marked as of 110 bales each. This firm brought to the Warehouse two policies, one in the Peabody Fire Insurance Company, and the other in the Atlantic Fire and Marine Insurance Company. The Peabody policy appears in the record, page 32. The material part of the other is given on page 73 of the printed record. There was nothing in either policy to show that they covered the same cotton. The then officers of the Warehouse Company received them as applicable to distinct lots, and loans were made to the depositors on this assumption. And after the fire, claims and proofs of loss were made by the Warehouse Company to each of the two insurers, upon the theory that they were independent insurances, and not one double insurance. It appears, however, that the respective agents of the Peabody and Atlantic Companies issued the policies upon the idea that they were on the same 110 bales, and the President of the Peabody

Company persuaded a succeeding President of the Warehouse Company to settle with that Company upon the theory that such was the legal effect of the policies. With the Atlantic, the matter had gone into litigation, and (as the then President of the Warehouse Company told Mr. Coale) a settlement was made upon this basis of a double insurance, because of apprehensions entertained as to the solvency of the Atlantic Company. Record p. 96. In this settlement with the Peabody, no account was taken of the policies issued by the *Home* and *Associated Firemen's* Companies. Testimony of Mr. George, Record p. 73.

Upon the hypothesis that the Warehouse Company was entitled to consider these policies of the Peabody and Atlantic Companies as upon different lots, the amount payable as for the loss of Hough, Clendenning and Company was fully adequate to cover the loans of the Warehouse Company as well as storage charges. If they were on the same cotton, there were 110 bales (or more exactly 109 bales as was ascertained to be the true number) upon the security of which the Warehouse Company had lent money to Hough, Clendenning & Company, without any insurance having been effected by said firm according to the rule, and understood habit, of the Warehouse Company. The result is, that if no obligation of contribution existed between the Warehouse Company's two policies, and the policies of the owners of the cotton (covering *their* interest only, though payable to the Warehouse Company,) and these policies of the Peabody and Atlantic should be considered as applying to different lots, the Plaintiff in Error was not liable to the Defendant in error for the loss on said 109 bales. If however the Atlantic and Peabody policies were in law upon the same cotton, there were 109 bales, in which the Warehouse Company was interested to the extent of its advances on them, and as to which it was otherwise unprotected by insurance; and the question arises whether or not the *Home* policy, now in suit, (together with the Associated Firemen's) covers such loss.

Thirdly. There is a question in the case whether or not there was a waiver of Preliminary Proof of loss by the Plaintiff in Error, and this question is sub-divided in its application to the two kinds of loss for which recovery is sought in this action, namely, the loss based upon the theory of the existence of a right to contribution as against the Plaintiff in Error on the part of

the companies insuring the respective owners of the cotton, and the loss upon the 109 bales, supposing the latter to have been otherwise wholly uninsured. The Plaintiff in Error contends that there is *no* evidence from which the jury were entitled to infer a waiver of preliminary proof as to any claim in suit except the claim founded upon the said alleged right of *contribution*.

It is further contended that the rulings and constructions of learned Judge sitting in the Circuit Court, (Judge Giles) upon the subject of preliminary proof generally were erroneous.

The 9th condition of the Policy provides as follows:

> "Persons sustaining loss or damage by fire shall *forthwith* give notice thereof in writing to the company, or its agent, and *as soon after as possible* they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just; showing also the ownership of the property insured; what other insurance, if any, existed on the same property, and giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured, &c." Printed Rec. p. 15.

It was sought by the Defendant in Error to show waiver of notice of loss, &c. by declarations of the Insurance Company's Agent. As the language of the condition is explicit in requiring prompt notice and proof, it would seem certain that there is *some* space of time, after which it is too late to comply with the condition. Whatever question there may be as to the precise limits of such interval, we suppose it to be clear, that if the facts out of which the claim arises are known to the insured before he presents a statement and proof of loss, and he does not include it therein, and no stipulation as to waiver of notice and preliminary proof as to such other supposed claim has *then* been entered into, and the loss proved and claimed is settled for without notice of such other claim, it is too late afterwards to comply with the condition, as to such further claim.

Or if the lapse of three months with the presentation and payment of a claim of loss apparently embracing all the losses covered by the policy, coupled with knowledge on the part of the insured of all the facts, be not regarded as sufficient to exhaust the period of time prescribed in the words "forthwith" and "as soon as possible," then it is claimed that, at all events, the lapse of 23 months before the presentation of the additional claim is sufficient.

It is contended also, on behalf of the Plaintiff in Error, that no acts or declarations of an Agent can be evidence of a waiver of regular notice and preliminary proof, unless done and uttered at a time when compliance with the condition was possible under the policy—in other words before the condition was broken. The claim and proof never offered can have no greater effect than formal notice and proof presented *at the time of the alleged acts of waiver* would have been allowed to have.

Fourthly.—Some questions of *Evidence* arose in the trial.

(1.) The Defendant in Error offered in evidence to the jury 4 *ex parte* adjustments made by F. P. Clark, a lawyer, at the instance of the Insurance Companies interested in maintaining the principle of contribution. These adjustments are on pages 74 to 85 of the printed Record, and are hereinafter stated in more detail. Besides being of a character eminently fitted to confuse the jury they are all grossly incorrect in the *data* upon which they are based—*data* which were neither proved nor offered to be proved. They comprehend without distinction Policies of depositors covering cotton upon which the Warehouse Company was interested as pledgee by reason of unpaid advances or loans, and policies on cotton in which the Warehouse Company had no manner of interest, the depositors thereof being perfectly solvent and having duly met and discharged all their obligations to the Warehouse Company at maturity—in some instances even before the fire. See particularly as to Elliott Brothers, F. W. Beck, and Hawkins, Williamson and Company. Printed Record, pp. 98, 99, 100. They also included a policy taken out by F. L. Brauns & Company, who had received payment of the loss in full from the People's Insurance Company, the insurer.

The Plaintiff in Error objected to the admission in evidence of these adjustments; but the Court allowed them to go to the jury "for the purpose of assisting the jury in calculating the amount of liability of the defendant upon the several hypotheses of fact stated in said calculation, but not to be obligatory upon the jury." The Defendant (plaintiff in error) excepted; and this constitutes the subject of the 1st Bill of Exceptions. Printed Record, p. 86.

The Plaintiff in Error contends that "hypotheses of fact" unproved, and not offered to be proved—contradicted indeed by the admitted evidence in the case (see Record pp. 98, 99 and 100, and Salvage Statement, p. 23)—were not proper to go to the jury at

all, and that calculations based upon such unsupported assumptions of fact could only mislead them.

The adjustments (it is submitted) were improperly admitted on another ground. As they proceeded on four different theories of law they could not *all* be correct, even had the *data* been sound: in reality the theory in no one of them is tenable.

(2.) The plaintiff below having offered in evidence sundry declarations &c., of Mr. Coale, the Defendant's Agent, to Mr. Barney, President of the Warehouse Company, as evidence tending to show waiver of preliminary proof, the defendant below offered the contemporaneous letter from Mr. Barney to Mr. Coale, which is to be found on pages 88 and 89, offering (if objection were made to the reading of the rest of the letter, which related to a certain negotiation for a compromise,) to read only the part which did not belong to the proposal of compromise, but had reference to the subject of preliminary proof, and disclosed the fact that Mr. Barney himself did not then understand that want of preliminary proof was waived. The counsel of the Warehouse Company objecting to the reading of any part of the letter, and the Court sustaining the objection, the Plaintiff in Error excepted. 2nd Exception. Printed Record, p. 89.

(3.) The Plaintiff below offered in evidence a record of a case of Hough, Clendenning and Company *vs.* The People's Insurance Company, in the Maryland State Courts, which occupies a considerable part of the present appeal record, extending from page 38 to page 70. The defendant below objected to its admission, and excepted to it as evidence in the cause; and the record was read subject to exception. Except to prove the fact of the existence of such a judgment—if that were competent or relevant in this case—it seems impossible to contend in this Court that it can be evidence affecting the present issue. As a judgment of the State Court upon the extent of the right of recovery of Hough, Clendenning and Company against the People's Insurance Company, it is doubtless conclusive as between those parties; but as to the Home Insurance, it is *res inter alios acta*, and of no effect whatever, even as to the particular subject of adjudication, the responsibility of the People's Company upon its policy. Certainly, the opinion of the Court of Appeals of Maryland, ex-

pressed in that case, cannot alter the general law, nor affect the Home Insurance Company, which was neither party nor privy to that suit, nor can it attach to the policy now to be construed a different meaning from that which it had at the time it was issued, and at the time of the fire. And the question is not one of *local* law, but belonging to Commercial law, and having a wide and important application. And it will not escape notice, that the Insurance Companies who insured the depositors and are interested in setting up the claim of contribution are not all Maryland Companies, but included in the number are several at least having their homes in other States, or in Great Britain.

II. Assignment of Errors.

1 The Court below erred in admitting as evidence to the jury the following *ex parte* Adjustments made by Mr. Clark, offered by the Defendant in Error, and forming the subject of the 1st Bill of Exceptions, viz:

A.

In this distribution of the loss I make no distinction between the policies made payable to the warehouse company and those remaining in the name of consignors, upon this construction of the meaning of the court of appeals, viz, that if the warehouse company could recover on the general policies, and "after satisfying its own claim, hold the balance as trustee for the owner," then this general insurance should contribute to the loss not only on the consignments on which the warehouse company had advanced, but on those with which it was entrusted.

General insurance in name of W. H. Co.

Home Ins. Co., N. Y.	20,000	
Associated Firemen's, Balto.	10,000	
		30,000

VALUES OF THE VARIOUS CONSIGNMENTS.

Hough, Clendening & Co.	cotton...	52,863	
Hawkins, Wilkinson & Co...	do...	26,861	16
Elliott Bros.	do...	8,188	81
McCloud & Co.	do...	1,862	35
F. L. Brauns & Co	do...	2,888	
W. B. Hooper	do...	320	97
F. W. Beck & Co., tobacco		6,000	
Total			98,984 29

Now, assuming that all consignments were under the protection of the general policies, then to ascertain what portion of the general policies would be contributory insurance to each specific policy, may we not take it to be such amount of the general policies as each particular consignment covered under the specific policies would be entitled to claim, were there no specific insurance? If so, we have the following as the amount recoverable by the warehouse co. for the use of the various consignors:

Hough, Clendening & Co., $\frac{5}{9}\frac{8}{8}\frac{6}{4}\frac{3}{2}\frac{0}{9}$ of $30,000	16,021 64	
Hawkins, Williamson & Co., $\frac{7}{9}\frac{6}{8}\frac{8}{4}\frac{6}{2}\frac{1}{9}\frac{1}{}\frac{6}{}$ of $30,000	8,141 03	
Elliott Bros., $\frac{8}{9}\frac{1}{8}\frac{8}{4}\frac{6}{2}\frac{1}{9}$ of $30,000	2,481 85	
McCloud & Co., $\frac{1}{9}\frac{8}{8}\frac{6}{4}\frac{2}{2}\frac{3}{9}\frac{5}{}$ of $30,000	564 43	
F. L. Brauns & Co., $\frac{2}{9}\frac{8}{8}\frac{8}{4}\frac{8}{2}\frac{0}{9}\frac{0}{}$ of $30,000	875 29	
W. B. Hooper, $\frac{3}{9}\frac{2}{8}\frac{9}{4}\frac{2}{2}\frac{3}{9}$	97 29	
F. W. Beck & Co., $\frac{6}{9}\frac{0}{8}\frac{0}{4}\frac{0}{2}\frac{0}{9}\frac{0}{}$	1,818 47	
		30,000
Hough, Clendening & Co., contributory insurance	16,021 64	
On each bale, $\frac{1}{6}\frac{6}{7}\frac{0}{3}\frac{2}{}\frac{1}{}\frac{6}{4}$	23 73	

Then the proportion of loss to each company can readily be found:

Harford Ins. Co	3,500	
Contributory ins., 30 bales	711 90	
		4,211 90
Weight of 30 bales.		2,349 56
Harford pays $\frac{3}{4}\frac{5}{2}\frac{0}{1}\frac{0}{1}\frac{0}{9}\frac{0}{0}$	1,952 41	
Gen. pol. $\frac{7}{4}\frac{1}{2}\frac{1}{1}\frac{0}{9}\frac{0}{0}$	397 15	
		2,349 56
Franklin same	1,952 41	
Gen. pol.	397 15	
		2,349 56
People's Ins. Co	2,500	
Contr. ins., 28 bales	664 44	
		3,164 44
Weight of 28 bales.		2,192 99
People's pays $\frac{2}{3}\frac{5}{1}\frac{0}{6}\frac{0}{4}\frac{0}{4}\frac{0}{}$	1,732 52	
Gen. pol. do. $\frac{6}{3}\frac{6}{1}\frac{4}{6}\frac{4}{4}\frac{4}{4}$	460 47	
		2,192 99
Potomac Ins. Co	900	
Contr. ins., 10 bales	237 30	
		1,137 30

Weight of 10 bales.		783
Potomac pays $\frac{90000}{118730}$	619 63	
Gen. pol. $\frac{23730}{118730}$	163 37	
		783
Peabody Ins. Co	6,000 00	
Contr. ins., 55 bales	1,305 13	
		7,305 13
Weight of 55 bales.		4 307 25
Peabody pays $\frac{600000}{730513}$	3,537 71	
Genl. pol. pays $\frac{130513}{730513}$	769 54	
		4,307 25
City F. Ins. Co	7,709	
Contr. ins., 77 bales	1,827 21	
		9,527 21
Weight of 77 bales.		6,030 47
City Fire pays $\frac{7700000}{952721}$	4,873 87	
Gen'l pol. " $\frac{152721}{952721}$	1,156 60	
		6,030 47
Washington Ins. Co	7,300	
Contr. ins., 67 bales	1,589 91	
		8,889 91
Weight of 67 bales.		5,246 99
Washington pays $\frac{7300000}{8889991}$	4,308 59	
Gen'l pol. " $\frac{1589991}{8889991}$	938 40	
		5,246 99
Atlantic Ins. Co	9,500	
Contr. ins., 82 bales.	1,945 86	
		11,445 86
Weight of 82 bales.		6,421 87
Atlantic pays $\frac{9500000}{11445586}$	5,330 10	
Gen'l pol's " $\frac{1945586}{11445586}$	1,091 77	
		6,421 87
Consolidated Ins. Co	12,100	
Contr. ins., 114 bales	2,705 22	
		14,805 22
Weight of 114 bales.		8,927 75
Consolidated pays $\frac{12100000}{14205322}$	7,296 44	
Gen'l pol's pay $\frac{2705322}{14205322}$	1,631 26	
		8,927 75

Home Ins. Co.	6,000	
Contr. ins., 57 bales	1,352 61	
		7,352 61
Weight of 57 bales		4,464
Home pays $\frac{60000}{735261}$	3 642 82	
Gen'l pol. " $\frac{135261}{735261}$	821 18	
		4,464
Citizens' Ins. Co.	1,400	
Contr. ins., 16 bales	379 68	
		1,779 68
Weight of 16 bales.		1,253 06
Citizens' pays $\frac{140000}{177968}$	985 73	
Gen'l pol's " $\frac{37968}{177968}$	267 33	
		1,253 06

The 109 bales not covered by specific insurance can only resort to the general insurance for indemnity, therefore there would be appropriated in the first instance to cover this loss the proportion which 109 bales could claim. Then, after the liabilities of the various companies insuring specifically have been determined, any balance of the general policies, unconsumed revert to the warehouse company for the benefit rateably of those consignors who could alone look to these general insurances for indemnity.

109 bales would be entitled to	2,586 57

Now it is evident that the loss on the 109 bales is $8,536.50, hence there is a deficit of $5,949.93 to be met by the remainder of the general policies. The remainder is $5,340.85, leaving a deficit of $609.08, which must finally be satisfied out of the balances of the general policies which remain after contribution has been made to the loss on the various consignments in the warehouse.

Deficit	609 08

HAWKINS, WILLIAMSON & CO.

Contribution from general policies, (number of bales not specifically mentioned in the policies)	8,141 03	

SPECIFIC INSURANCE.

Royal Ins.	Co.	10,000	
Western	do.	6,500	
Connecticutt	do.	16,000	
Peabody	do.	5,000	
Hartford	do.	3,000	
Home	do.	5,000	
			53,641 03
Amt. of loss, 143,262 lbs., at 18¾ cts.			26,861 16

Therefore—

Royal	pays $\frac{10\,000\,000}{53\,641\,03}$	of 26,861.16...	5,007 58		
Western	do $\frac{6\,500\,00}{53\,641\,03}$	" ...	3,254 93		
Connecticut	do $\frac{16\,000\,00}{53\,641\,03}$	" ...	8,012 12		
Peabody	do $\frac{5\,000\,00}{53\,641\,03}$	" ...	2,503 79		
Home	do $\frac{5\,000\,00}{53\,641\,03}$	" ...	2,503 79		
Harford	do $\frac{3\,000\,00}{53\,641\,03}$	" ...	1,502 28		
Gen'l pol's	do $\frac{3\,141\,03}{53\,641\,03}$	" ...	4,076 68		
					26,861 16

ELLIOTT BRO'S. & CO.

Contribution from gen'l policies..	2.481 85	
In this case, the specific number of the bales are not mentioned in the policies.		

SPECIFIC INS'S.

Potomac Ins. Co.....	14,000	
Peabody "	3,500	
Royal "	3,400	
		23,381 85
Loss.....		3,721 67

Potomac pays $\frac{14\,000\,00}{23\,381\,85}$	2,228 38	
Peabody " $\frac{3\,500\,00}{23\,381\,85}$	557 09	
Royal " $\frac{3\,400\,00}{23\,381\,85}$	541 17	
Gen'l pol's " $\frac{2\,491\,95}{23\,381\,85}$	395 03	
		3,721 67

MC CLOUD & CO.

The general policies alone can be resorted to, there being no specific insurance.

Prop'n of general pols.....	564 43	
Loss	1,862 25	
Deficit.....		1,297 82

F. L. BRAUNS & CO.

Contribution from gen'l pol's.....	875 29	
People's Ins. Co.....	2,888	
		3,763 29
Loss		2,888
Peoples pays $\frac{2\,888\,00}{3\,763\,29}$	2,216 29	
Gen'l pol's " $\frac{875\,29}{3\,763\,29}$	671 71	
		2,888

W. B. HOOPER.

General policies must pay, there being no specific ins.

Prop. of gen'l pol's	99 29	
Loss	320 97	
Deficit		223 68

F. W. BECK & CO.

Contribution from gen'l policies	1,818 47	
Peoples' Ins. Co	6,000	
		7,818 47
Amt. of loss		6,000
Peoples' pays $\frac{4000000}{7818477}$	4,604 49	
Gen'l pol's do. $\frac{1818477}{7818477}$	1,395 51	
		6,000

General policies have been appropriated as follows:

Hough, Clendening & Co	16,021 64	
Hawkins, Williamson & Co	4,076 68	
Elliott Bros	395 03	
McCloud & Co	564 43	
F. L. Brauns & Co	671 71	
W. B. Hooper	97 29	
F. W. Beck & Co	1,395 51	
		23,222 29
30,000—23,222.29=balance of gen'l policies		6,777 71

Which will be appropriated as follows:

On the 109 bales, Hough, Clend. & Co	609 08	
" " cotton, McCloud & Co.	1,297 82	
" " " W. B. Hooper	223 68	
Balance	4,647 13	
Total		6,777 71

B.

Adopting the theory that the court of appeals decides that the general insurance is double or contributory only to the specific policies made payable to the Baltimore Warehouse Company, and to the extent of that company's interest therein:

ADVANCES.

On consignment of Hough, Clendening & Co.	48,720	
" " " Hawkins, Williamson & Co	16,800	
" " " McCloud & Co	1,480	
" " " F. W. Beck & Co	4,234	
		71,234

Claim of W. B. Hooper is ignored because, upon examination of the records of the warehouse co., it does not appear that he ever consigned any property to them.

Amt. of gen'l insurance		30,000
Prop'n of Hough, Clendening & Co., $\frac{48720}{71234}$	20,518 37	
Hawkins, W. & Co, $\frac{16800}{71234}$	7,075 08	
McCloud & Co., $\frac{1430}{71234}$	623 32	
F. W. Beck & Co., $\frac{4234}{71234}$	1,783 23	
		30,000

HOUGH, CLENDENIN' & CO.

Contributory insurance		20,518 37
On each bale, $20\frac{513}{675}37$		30 39
Harford Ins. Co	3,500	
Contributory ins., 30 bales	911 70	
		4,411 70
Value of 30 bales		2,349 56
Harford pays $\frac{350000}{441170}$	1,864 01	
Gen'l pol's " $\frac{91170}{441170}$	485 55	
		2,349 56
Franklin Ins. Co. pays	1,864 01	
Gen'l pol	485 55	
		2,349 56
People's Ins. Co. "	1,636 11	
Gen'l pol's "	556 88	
		2,192 99
Potomac Ins. Co. "	585 34	
Gen'l pol's "	197 66	
		783
Peabody Ins. Co. "	3,368 79	
Gen'l pol's "	938 46	
		4,307 25
City Fire Ins. Co. "	4,624 94	
Gen'l pol's "	1,405 53	
		6,030 47
Washington Ins. Co. "	4,102 66	
Gen'l pol's "	1,144 33	
		5,246 99
Atlantic Ins. Co. "	5,087 38	
Gen'l pol's "	1,334 49	
		6,421 89

Consolidated Ins. Co. pays	6,940 54		
Gen'l pol's "	1,987 21		
			8,927 75
Home Ins. Co. "	3,463 94		
Gen'l pol's "	1,000 06		
			4,464
Citizens' Ins. Co. "	930 04		
Gen'l pol's "	323 02		
			1,253 06
Gen'l pol's pay on the 109 bales.			3,312 51
By summing up it will be found that there has been appropriated of the gen'l policies	13,171 25		
Amount remaining	7,347 12		
			20,518 37
Now 108 bales	8,536 50		
To the payment of which has been appropriated of the gen'l pol's	3,312 57		
Balance	5,223 99		
Amount of gen'l pol's unconsumed and which can be appropriated elsewhere.	2,123 13		
			7,347 12

HAWKINS, WILLIAMSON & CO.

In this case there are two classes of policies, the one made payable to the warehouse company, and the other not. Let the policies in name of H., W. & Co., and not assigned to the W. H. Co., have their rateable proportion of the loss determined, and then those made payable to the warehouse co.:

Payable to W., H. & Co.:		
Connecticutt	5,000	
Peabody	5,000	
Harford	3,000	
Home	5,000	
		18,000
In name of Hawkins, Williamson & Co.		
Royal	10,000	
Western	6,500	
Connecticutt	6,000	
Do.	5,000	
Contribution from genl. policies	7,075 08	
		34,575 08
		52,575 08

Royal pays $\frac{100000}{455000}$ of $26,861.16	5,903 51		
Western do. $\frac{65500}{455000}$ "	3,837 28		
Connect. do. $\frac{110000}{455000}$ "	6,493 68		
			16,234 65

Now 26,861.16—16,234.65=10,626.51, which must be paid out of the $18,000 specific insurance and the contribution from the genl. policies, 18,000+7,075.08=25,075.08.

REC. 265—6.

Connecticutt pays $\frac{500000}{2507508}$ of $10,626.51.	2,118 94		
Peabody " " " "	2,118 94		
Home " " " "	2,118 94		
Harford " $\frac{300000}{2507508}$ " "	1,271 36		
Gen'l policies " $\frac{707508}{2507508}$ " "	2,998 33		
			10,626 51
Amt. paid by specific policies			16,234 65
Total			26,861 16
Assignment of gen'l pol's			7,075 08
Appropriation "			2,998 33
Balance to be appropriated elsewhere			4,076 75

F. W. BECK & CO.

People's Ins. Co.	6,000		
Gen'l pol's	1,783 23		
			7,783 23
Loss			6,000
People's Ins. Co. pays	4,625 32		
Gen'l pol's	1,374 68		
			6,000
Amt. of gen'l pol's assigned	1,783 23		
" " appropriated	1,374 68		
Balance			408 55

Amounts of the general policies left of the various assignments:

Hough, Clendening & Co.	2,123 13		
Hawkins, Williamson & Co.	4,076 75		
F. W. Beck & Co	408 55		
			6,608 43
Out of which must be paid the balance of claim of McCloud & Co not met by the proportion of the general policies in the first instance assigned to it			1,239 03
6,608.43—1,239.03=the amount still left unconsumed of the general policies			5,369 40

C.

On the theory that the general insurance and those policies made payable to the warehouse co. are double insurances, and limiting the right of contribution to them; also that the W. H. Co. can recover to the extent of the loss, and is not confined to their interest, divide the gen'l ins. among the various consignments advanced upon in the ratio of their values, and we have:

Hough, Clendening & Co.	52,862	
Hawkins, W. & Co.	26,861 16	
McCloud & Co.	1,862 35	
F. W. Beck & Co.	6,000	
		87,586 51
Hough, C. & Co. would have $\frac{52862.00}{87586.51}$ of $30,000	18,106 23	
Hawkins, W. & Co. $\frac{26861.16}{87586.51}$ of 30,000	9,200 62	
McCloud & Co. $\frac{1862.35}{87586.51}$ of 30,000	637 85	
F. W. Beck & Co. $\frac{6000.00}{87586.51}$ "	2,055 30	
		30,000
Hough, Clendening & Co. would have $\frac{18106.23}{645}$ = $26,824 pr. bale:		
Harford Ins. Co.	3,500	
Gen'l pol's contr. 30 bales	804 73	
		4,304 73
Value of 30 bales		2,349 56
Harford pays $\frac{3500.00}{4304.73}$	1,910 37	
Gen'l pol's " $\frac{804.73}{4304.73}$	439 19	
		2,349 56
Peabody Ins. Co. pays	3,457 17	
Gen'l pol's "	850 08	
		4,307 25
Washington Ins. Co. "	4,210 42	
Gen'l pol's "	1,036 57	
		5,246 97
Potomac Ins. Co. "	603 21	
Gen'l pol's "	179 79	
		783
Atlantic Ins. Co. "	5,214 53	
Gen'l pol's "	1,207 34	
		6,241 87
Consolidated Ins. Co."	7,126 68	
Gen'l pol's "	1,801 07	
		8,927 75

City Fire Ins. Co. pays	4,754 99	
Gen'l pol's "	1,275 48	
		6,030 47
Home Ins. Co. "	3,557 45	
Gen'l pol's "	906 55	
		4,464
Franklin Ins. Co. "	1,910 37	
Gen'l pol's "	439 19	
		2,349 56
Citizens Ins. Co. pays	959 05	
Gen'l pol's "	294 01	
		1,253 06
People's Ins. Co. "	1,686 36	
Gen'l pol's "	506 63	
		2,192 99
Gen'l policies pay on 109 bales		2,923 81
Amount contributed by gen'l policies	11,859 71	
Remainder of " "	6,246 52	
		18,106 23
109 bales=	8,536 50	
From which take	2,923 81	
Balance		5,612 69
6,246.52 –5,612.69, amt. remaining of gen'l pol's		633 83

HAWKINS, WILLIAMSON & Co., (vid. apportionment B.)

We have, then, spec. pol's	18,000	
Amt. from gen'l pol's	9,200 62	
		27,200 62
Connect. pays $\frac{500000}{2720062}$ of $10,626.51	1,953 36	
Peabody " " " "	1,953 36	
Home " " " "	1,953 36	
Harford " $\frac{300000}{2720062}$ " "	1,172 01	
Gen'l pol's " $\frac{920062}{2720062}$ " "	3,594 42	
		10,626 51
Assignment of gen'l pol's	9,200 62	
Appropriation "	3,594 42	
Balance		5,606 20

F. W. Beck & Co.

People's pays	4,469 10	
Gen'l pol's "	1,530 90	
		6,000

Amts. of gen'l pol's remaining:

In case of Hough, C. & Co	633 83	
Hawkins, W. & Co	5,606 20	
F. W. Beck & Co	524 40	
		6,764 43
Out of which must be paid McCloud & Co, balance unsatisfied		1,224 50
6,764.43—1,224.50=amt. remaining of gen'l pol's		5,539 93

D.

Same theory as in C, but general insurance first applied to pay the loss on articles not under the protection of the special pol's:

On 109 bales	8,536 50	
McCloud & Co	1,862 35	
		10,398 85
From amount of gen'l pol's	30,000	
Take	10,398 85	
Balance		19,601 15

Apportion this among consignments on which advances were made in the ratio of the values of the same, and we have:

Hough, Clendening & Co., $\frac{52386200}{85724160}$	12,087 24	
Hawkins, W. & Co., $\frac{26536116}{85724160}$	6,141 84	
F. W. Beck & Co., $\frac{6000000}{85724160}$	1,372 07	
		19,601 15

Hough, Clendening & Co.:

$12\frac{037}{566}\ ^{24}$=21.355 per bale.

Harford would have contr. ins. 30 bales	640 65	
Amt. of policy	3,500	
		4,140 65
Value of 30 bales		2,349 56
Harford would pay $\frac{3500000}{4140655}$	1,986 02	
Gen'l pol's do. $\frac{640655}{4140655}$	363 54	
		2,349 56

Hawkins, Williamson & Co, vid. apportionment B.:

We have then special pol	18,000	
Amt. from gen'l pol's	6,141 84	
		24,141 84

Harford	pays $\frac{300000}{2414184}$	of $10,626.51...	1,320 51	
Connecticutt	" $\frac{500000}{2414184}$	" " ...	2,200 85	
Home	" "	" " ...	2,200 85	
Peabody	" "	" " ...	2,200 85	
Gen'l pol's	" $\frac{614134}{2414184}$	" " ...	2,703 45	
				10,626 51

F. W. Beck & Co.:		
People's pay.....	4,883 31	
G. P. "	1,116 69	
		6,000

Therefore we have remaining of general policies:

Hough, Clendening & Co.....	4,669 03	
Hawkins, Williamson & Co.....	3,438 39	
F. W. Beck & Co.....	455 38	
Total.....		8,562 80

Printed record, pp. 74 to 85.

2. There was error in not permitting any part of a letter from Mr. Barney, President of the Baltimore Warehouse Company to Mr. Coale, Agent of the Home Insurance Company to be read to the jury, the Plaintiff in error having offered to omit (if desired) all that part of the letter containing the offer of compromise; which letter is in the following words:

J. H. BARNEY, *President.* C. A. FOOTE, *Secretary.*

BALTIMORE WAREHOUSE COMPANY,
OFFICE, No. 2, RIALTO BUILDING, SECOND STREET

Baltimore, May 27th, 1873.

GEO. B. COALE, ESQ.,
Agent of the Home Ins. Co. of New York:

DEAR SIR: I am willing to compromise the claim of the warehouse co. for loss of the 109 bales of cotton, which were not covered by specific policies by accepting therefore nineteen hundred & eighteen $\frac{30}{100}$ dollars, and interest from Sept., 187-, & giving the receipt you propose, wh. the modifications indicated by the pencilled additions thereto, provided it be distinctly understood between us that the warehouse co. reserves all claim for itself, or as trustee for others, by way of contribution or otherwise, for the destruction or damage of any other cotton, & that the Home Ins. Co will not interpose the objection of want of preliminary proof, or any other technical defense to any suit which may be brought therefor. We will bring our suit in such court as we may choose, and you will exercise such right of removal as you may have.

Yrs., respy.,
JAMES H. BARNEY, *Prest.*

Printed record, pp. 88, 89.

(3) The court below erred in admitting the record of the case of Hough, Clendenning and Company *vs.* The People's Insurance Company, together with the judgment and opinion of the Court of Appeals in said case, before referred to, (page 8 of this brief,) and set out at length in the Record, pp. 38-70.

(4.) There was error in granting the Plaintiff's 5th prayer, which asked the court to instruct the jury as follows:

> If the jury shall find, from the evidence, that Mr. Hooper the president of the plaintiff, at the time of receiving from the defendant the moneys receipted for on the said policy for the losses mentioned therein, was requested by Mr. Coale, the defendant's agent, to surrender the said policy, but refused to do so & notified Mr. Coale that he retained the said policy in order to assert against the defendant thereafter any claims thereunder not then known to him, but which might thereafter appear, & that said Coale accordingly left said policy in the hands of Mr. Hooper, & wrote & signed the receipt written thereupon, & altered the usual receipt of the company to conform thereto in the manner testified to by said Coale & sent to the defendant a copy of said receipt as altered, with the memorandum thereon proven by said Coale ;
>
> And if the jury shall further find that said Coale did not, nor did the defendant make any objection to the retention of said policy by said Hooper for the purpose aforesaid, but, on the contrary, assented thereto, & that said Coale simply denied & protested that the defendant was not liable & would not & did not recognize or concede its liability under the terms of said policy for any other losses than those paid and receipted for as aforesaid ;
>
> And shall further find that the agreements for the waiver of the 13th condition of said policy, which have been given in evidence, were executed by the defendant for the purpose of giving to the plaintiff a continuing right to assert by suit its claims reserved by Mr. Hooper, as aforesaid, pending litigation in the State Courts, involving that the legal principles on which the respective rights of the parties under said policy might depend & that no suggestion or intimation of any defense to said claims on the ground of defect or failure of preliminary proof or notice under the 9th condition of insurance was made by defdt. or its said agent, until a short time before the institution of this suit, & after ineffectual efforts between the parties to settle the claims of the plaintiff under said policy upon their merits, then –
>
> The jury are entitled, from such facts, with the other facts in the case, to find that the defendant waived the compliance by the plaintiff as to such reserved claims, with the 15th paragraph of the 9th of the conditions of insurance attached to the policy.
>
> And if the jury find such waiver as aforesaid, then the failure to offer such preliminary proof is no bar to the plaintiff's right to recover in this suit.
>
> Printed record, pp. 103, 104.

(5.) The court erred below in rejecting the Defendant's 1st, prayer, which prayed the Court to instruct the jury that

> 1st. The policies obtained by Hough, Clendening & Company upon their cotton, and made payable to the Baltimore Warehouse Company, being for a different assured, were upon a different interest from that covered by the policy now in suit; and the latter is not bound to contribute to any losses for which the former are liable.
>
> Printed record, p. 104.

(6.) It was error to reject the Defendant's second prayer, viz:

> 2nd. If the jury find that, in the course of dealing between the Baltimore Warehouse Company and its depositors, the latter, before receiving advances upon goods stored, were required to insure the same to an amount not less than the sum advanced, and that for the purpose of securing the said warehouse company the policies in such cases were made payable to the warehouse company, and were delivered to them at the time of procuring such advances; and shall further find that the two policies of $6000 each, i sued on the 24th day of May, 1870, by the Atlantic and Peabody insurance companies, were obtained by Hough, Clendening and Company, with knowledge on the part of said companies that they were intended to secure the warehouse company for advances, and that Hough, Clendening and Company then took them to the said warehouse company, and that the latter received them without notice to the said warehouse company of the circumstances under which they were obtained; and that upon the faith thereof the said warehouse company, their officers believing that each policy insured the full quantity mentioned in the same, and that the two together covered 220 bales, thereupon advanced to Hough, Clendening and Company a sum of money larger than would have been advanced but for the existance of both said policies and the belief that they were independent of one another, then the said Atlantic and Peabody companies were respectively bound as between them and the said warehouse company by the representations contained in the respective policies, and could not limit their responsibility to a joint responsibility for 110 bales of cotton, but were each liable as separate insurers to the amount of 110 bales each
>
> Printed record p. 104.

(7.) It was error to reject the defendant's 3rd prayer, viz:

> 3rd. If the jury shall find from the evidence that, from the time of the fire of July 18th, 1870, until after the 25 of June, 1872, no claim or demand was made by the plaintiff on the defendant for any loss by reason of said fire, except for the 24 bales of cotton mentioned in the written proofs and settlement offered in evidence,

and for an alleged liability of the defendant under the policy declared on for contribution with the special policies set forth in the agreement filed in this case, then there is no evidence before the jury from which they can infer a waiver of preliminary proof on the part of the defendant in regard to any other claim under the policy declared on, except the claim for contribution with the said special policies.

Printed record, p. 105.

(8) It was error to reject the Defendant's 4th prayer, viz:

4th. By the 9th condition of the policy upon which this suit is brought, it was made necessary for the insured, after the fire, forthwith to give notice of their loss to the defendant, and as soon as possible thereafter to deliver as particular an account of their loss and damage as the nature of the case admitted of, and to accompany the same with proof as therein provided; and no acts or declarations of the agent, Mr. Coale, subsequent to the 10th of October, 1870, are admissable to shew waiver by the defendant of said condition.

Printed record, p. 105.

(9.) It was error to reject the Defendant's 6th prayer, viz:

6th. There is no evidence in this case of any waiver on the part of the defendant or of its agent in such manner as to bind them of notice of loss and preliminary proof as to the 109 bales of cotton alleged to have been left without specified insurance by reason of the Atlantic and Peabody policies of $6,000 being upon the same 110 bales.

Printed record, p. 105.

(10.) It was error to reject the Defendant's 7th prayer, viz:

7th. That if the jury shall find from the evidence and under the instructions of the court that at the time of the fire of July 18, 1870, there were 109 bales of cotton deposited by Hough, Clendening & Co. in the warehouse of the plaintiff which were not covered by any of the special policies taken out by the said Hough, Clendening & Co. & made payable to plaintiff, and that the plaintiff had notified the said Hough, Clendening & Co. that they themselves must insure all cotton deposited by them; and if the jury shall find that there was, on the part of the defendant, a waiver of preliminary proof in regard to the loss on said 109 bales, & that the plaintiff is entitled to recover on account of said loss, then the amount the said plaintiff is entitled to recover on account of the said 109 bales, should be two-thirds of plaintiff's own loss by reason of the damage of said bales by said fire; & in order to ascertain the plaintiff's own loss on said 109 bales, the salvage thereon received by the plaintiff & and the amount due on all the said special policies should be deducted from the total amount advanced by the plaintiff to the said Hough, Clendening & Co.

Printed record, p. 105.

(11.) It was error to instruct the jury as follows:

> If the jury shall find from the evidence in this case that, at the time of the fire of July 18th, 1870, there were 109 bales of cotton in the warehouse of plaintiffs deposited by Hough, Clendining & Co., which were not covered by any of the special policies taken out by said depositors; and that on said 109 bales the plaintiffs had made advances, which were unpaid at the time of the fire; and shall further find for the plaintiff as to the waiver of preliminary proof, under the 5th prayer of the plaintiff, which is granted by the court, then the plaintiff is entitled to recover in this action for the $\frac{2}{3}$ of all loss or damage to said 109 bales to the extent of its advances as aforesaid.
>
> First paragraph of Court's own instruction, record p. 106.

(12.) It was error to instruct the jury as follows:

> And if the jury shall find from the evidence that there was other cotton deposited by depositors in pltff.'s warehouse, and which was covered by special policies of insurance given in evidence in this case, and upon which pltff. had made advances, then the said pltff. is entitled to recover also for the $\frac{2}{3}$ of all loss or damage to said cotton, to the extent of its advances on the same less the amount which the jury may find to be due from said special policies made payable to the said pltff., each of said special policies contributing to the loss on the cotton insured by it with the general policies held by the plaintiff.
>
> Second paragraph of Court's own instruction, record p. 106.

BRIEF OF ARGUMENT.

I. The policy of the Home Insurance Company, on which the present suit is brought, is not bound to contribute to payment of the losses, for which the policies of Hough, Clendinen & Co. are liable. There is no double insurance, because the last named policies were for a different assured and upon a different interest, from that covered by the policy now in suit. The fact that on the face of the policies of Hough, Clendinen & Co. was a memorandum, that the "loss if any payable to the Baltimore Warehouse Company," does not affect the principle; but is simply "a mode of appointing that the loss of the party assured shall be paid by the Company to such third person."

Bates *vs.* The Equitable Ins. Co., 10 Wall., 33.
Grosvenor *vs.* Atlantic Fire Ins. Co., 17 N. Y., 391.
Hale *vs.* Mechs. M. F. Ins. Co., 6 Gray, 172.
Fogg *vs.* Middlesex, Mg. Co., 10 Cushing, 346.

Macomber *vs.* Cambridge Mut. Ins. Co., 8 Cushing, 135.
Young *vs.* Eagle Fire Ins. Co., 14 Gray, 153.
State Mut. Fire Ins. Co. *vs.* Roberts, 31 Pa. 438.
Loring *vs.* Man'g Ins. Co., 8 Gray, 28.
Woodbury Savings Bk. *vs.* Charter Oak Ins. Co., 29 Conn., 374.
Turner *vs.* Quincy Mut. F. Ins. Co., 109 Mass., 568.
Tallman *vs.* Atlantic F. & M. Ins. Co., 29 How. Pract. Rep., 71.

The Court's instruction (p. 106 of Rec.) is framed expressly on the theory that the particular policies taken out by Hough, Clendinen & Co. and the general policies taken out by the Warehouse Company, were mutually bound to contribution, and therefore was clearly erroneous.

The consequences of the application of such a theory would in many cases prove most inequitable. Thus, the Warehouse Company might insure in an insolvent company, of which Hough, Clendinen & Co. would never have approved; yet, the latter, having selected a sound company for their particular insurances, would lose part of their indemnity by the act of the Warehouse Company, done without their knowledge or consent.

II. The decision of the Court of Appeals of Maryland in the case of Hough, Clendinen & Co. *vs.* People's Ins. Co., (36 Md., 398,) cannot bind the Home Insurance Company, which was in no sense a party to that case; nor can it have the effect of governing the decision of the United States Court on a question of commercial law.

1 Greenl. Ev., § 523.
Carpenter *vs.* Prov. & Wash. Ins. Co., 16 Peters, 495, 511.

The cardinal principle, that where the parties insured are different, the interests must be different, is decisive of this case, which turns on the question: Do the policies constitute a double insurance and give ground for contribution? It is therefore unnecessary to regard it in a different aspect; but if there were

occasion to do so strong evidence would be found in the terms of the Home policy itself of the intention of the parties to it, that the loss insured against should be measured by the interest or liability of the Warehouse Company. And that such was the construction all the parties interested originally put upon it, the evidence in the record abundantly shows. The circumstance that the Maryland State Court, long after the making of this contract, and the occurrence of the loss, put an erroneous construction on another contract between other parties, cannot alter the meaning of this.

Martineau v Kitching L.R. 7 Q.B. 436
North Brit. I. Co. v Moffatt L.R. 7 C.P. 25
Lee v Adsit 37 N.Y. 78.

III. The respective policies of the Atlantic and Peabody Insurance Companies each appearing to be on 110 bales of cotton, and not indicating any identity of subject-matter, and there being in the Warehouse two distinct lots to which they were respectively applicable, and having been accepted and acted upon by the Warehouse Company as covering distinct lots, on both of which said Company made advances, the said two Insurance Companies knowing that the policies were made to cover advances; it was not competent for those Insurance Companies to contradict the representations contained in the respective policies, but each of said Companies was liable as a separate insurer to the amount of 110 bales.

The Defendants' second prayer ought therefore to have been granted.

IV. No suggestion of a claim for a loss on 109 bales, as uninsured by any particular policy of any depositor, having been made until after the lapse of some two years from the time of the loss, there was no evidence from which the jury could infer any waiver of preliminary proof in regard to said 109 bales; and the Defendants' third and sixth prayers ought therefore to have been granted.

V. It is submitted, that the proposition contained in the Defendants' fourth prayer is very clear, and that declarations of the

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Supreme Court of the U. S.

No. 265.

THE HOME INSURANCE COMPANY OF NEW YORK,
PLAINTIFF IN ERROR,

vs.

THE BALTIMORE WAREHOUSE COMPANY,
DEFENDANT IN ERROR.

BRIEF AND POINTS OF THE DEFENDANT IN ERROR.

S. T. WALLIS,
JOHN H. THOMAS,
For Deft. in Error.

Murphy & Co., Printers, Publishers, Booksellers & Stationers, Balt.

In the Supreme Court of the U. S.

No. 265.

THE HOME INSURANCE COMPANY OF NEW YORK,
PLAINTIFF IN ERROR,

vs.

THE BALTIMORE WAREHOUSE COMPANY,
DEFENDANT IN ERROR.

BRIEF AND POINTS OF THE DEFENDANT IN ERROR.

This is an appeal from a judgment of the Circuit Court of the United States, for the District of Maryland, in a case which was instituted in one of the State Courts of that Circuit, and which, upon the application of the plaintiff in error, was removed to the Federal Court. The suit was instituted by the defendant against the plaintiff in error, on a Policy of Insurance. The former was, as its name indicates, strictly a Warehouse Company, chartered for the purpose of "carrying on the business of warehousemen and forwarders in the City of Baltimore." By its charter, it was "expressly prohibited from buying or selling any goods, wares, or merchandise or other property as dealers or on commission," and only authorized to use such personal property as was necessary for the prosecution of its business. P. 24 of Record. Its amended charter authorized it to charge storage and make ad-

vances upon all goods or other property which might be received or stored with it, and made all such charges and advances a lien on said property. P. 27 and 30. Being thus prohibited from owning any personal property, except such as was necessary for the prosecution of its business, and engaged in the business of storing and advancing upon goods, for which storage and advances it had a lien, which was an insurable interest, the plaintiff in error issued to it a policy "against loss or damage by fire to the amount of $20,000, on merchandise hazardous or extra hazardous, their own or held by them in trust, or in which they have an interest or liability, contained in" a certain described building, then used by the insured for its business as warehouseman. P. 9, &c.

While this policy and another issued by the Associated Firemen's Insurance Company for $10,000, using the same language and covering the same risk, were in force, the building therein described, together with the merchandise held therein on storage by the defendant in error and on which it had advanced $71,234, were destroyed by fire. Other policies, in the names of other parties as assured, covering only specific portions of said merchandise were also in force at the same time. Some of the specific policies had been made payable to the Warehouse Company, as security for its advances, and some to the owners of the goods. P. 19 to 22, inclusive. After the fire, representatives of the different insurance companies, including the plaintiff in error, as a committee on behalf of said companies, took possession of such of the merchandise as had not been destroyed, arranged and sold it at auction, p. 19; and Coale, the agent of the plaintiff in error, as one of that committee, furnished a full statement of what had been on hand, what was saved, and the net amount realized at auction from the salvage. P. 23. When the losses came to be adjusted and distributed among the different companies, Coale was active in suggesting and insisting upon modes of adjustment, for the purpose of lessening the liability of the plaintiff in error. P. 70 and 71.

Among other points on which no agreement between the underwriters and the insured could be reached, was the question whether the general policy of the plaintiff in error and that of the Associated Firemen's Insurance Company were liable to contribute with the specific policies for losses on the property covered by the latter.

Cases involving this question were instituted in the State Courts. Among others, was one by Hough, Clendenning & Co., to the use of the Warehouse Co., on a specific policy against the People's Insurance Company, which was eventually taken to the Court of Appeals of Maryland, pages 38 to 70, inclusive. That Court decided, as the inferior court had done, that the policies of the plaintiff in error and of the Associated Firemen's Insurance Company were bound to contribute. See plaintiff's 1st prayer, p. 63, and opinion of the Court of Appeals, p. 68 of the Record. There were also two specific policies to Hough, Clendenning & Co., one by the Peabody, and one by the Atlantic Insurance Company, on 110 bales of cotton. Question was made whether the last mentioned policies were on the same or on different lots of cotton. If on the same lot, as the jury in the case now under consideration found they were, 109 bales of cotton were uncovered by specific policies, and were clearly covered by the general policy of the plaintiff in error, which is sued on in this case, and by that of the Associated Firemen's Insurance Company. Coale was aware of both of these questions from the beginning. P. 96.

For the purpose of awaiting the decision by the State Courts of this question of contribution and also of the question whether the policies of the Peabody and Atlantic Companies covered the same lot of 110 bales of cotton, or two lots, each, of that number, amounting together to 220 bales, by the decision of both which questions it was evidently contemplated, if not agreed, that the parties to this cause were to be bound, the plaintiff entered into a written agreement with the defendant in error, extending, to a named day, the period within which suit might be brought on the policy sued on in this case, p. 17 and 31. The final decision

of these questions not having been made within the period prescribed in the first agreement, another agreement was made, providing for a further extension, p. 18. Pending this state of facts, the defendant presented to the plaintiff in error preliminary proof as to and received payment for 25 bales of cotton, which were not covered by any of the specific policies, nor affected by any of the questions involved in the pending cases before referred to, nor otherwise the subject of dispute. When this payment was made, the plaintiff in error asked to have its policy surrendered. Hooper, the president of the defendant, refused to surrender it, saying that he wanted to retain it, to cover all losses, whether then seen or not—all against which it might turn out, from the decision of the cases then pending, or from other causes which could not then be anticipated or seen, that the defendant in error was not otherwise protected; saying that some of the Companies which had issued specific policies were already contending that the plaintiff's and the Associated Company's Policies were bound to contribute to the losses covered by the specific policies. He also then expressly and specifically made claim for the 109 bales of cotton, if not covered by the policies of the Peabody and Atlantic, and was careful to say that the policy of the plaintiff was a blanket policy, intended to cover all losses of every kind, which could not be seen or specified, and insisted on retaining it for that purpose. The agent of the plaintiff denied that it could be held responsible for any other loss than that of the 25 bales. No final settlement was made. But the agent of the plaintiff, after consulting with the home officers of his company, settled for the 25 bales, allowed Hooper to retain the policy of the plaintiff, and instead of requiring, as was its habit, a receipt in full for all losses under the policy, modified its established printed form of receipt, and took one for the special settlement then made, leaving all of the other claims of the defendant in error open for future settlement. Pages 31, 38, 95, 96, 97. No objection to the want of preliminary proof, as to the claims re-

tained, was made until a few days before the institution of this suit. The plaintiff in error always however denied its liability on these claims, until it was established by the decision of the Court of Appeals in one of the cases before referred to. After that decision, Coale, the agent of the plaintiff, admitted that its liability was thereby established, made various calculations of the amount of it, showing that he had all the information which preliminary proof could have given him, figured it down to a sum very nearly corresponding with the verdict afterwards rendered by the jury, and finding that he could not make it smaller, determined to stand a suit and rely, as he did, on all defences, technical and meritorious. See testimony of Hooper, p. 31; Carey, p. 71; Atkinson, p. 73; Boyd, p. 74; Barney, p. 88; Cushing, p. 87; Coale, p. 96; Clark, p. 86, 87; Foote, p. 89.

Barney, who was elected president of the defendant after the fire and after the settlement between Hooper and Coale before referred to, became convinced that the policies of the Peabody and Atlantic Companies covered only the same lot of 110 bales, and settled with these companies on that basis, p. 88. It was not sought at the trial of this cause to bind the plaintiff by this settlement, but the question whether 109 bales were uncovered by specific policies or not, was left as an open one to the jury for their decision.

At the trial of this cause, the above mentioned facts having been all proven, and the defendant in error having proved that Capt. Frank P. Clark was a lawyer by profession, that he had occupied himself in making insurance adjustments, as a specialty, and that in 1870, he had devoted himself principally to that business, offered as part of his evidence several statements or adjustments made by him, merely as statements or illustrations of the results arrived at upon the different theories of adjustment therein adopted, p. 74. The plaintiff in error objected to the admission of them in evidence, but the Court overruled the objection, and allowed them to go to the jury, only for the purpose of assisting

the jury in calculating the amount of liability of the plaintiff upon the several hypotheses of facts stated in said calculations, with the express instruction, that they were admitted only as calculations to aid the Jury, and were, in no way binding on them. To this ruling the plaintiff took its first exception, p. 86.

The plaintiff afterwards offered in evidence a letter, which was admitted to be part of a negotiation for a compromise, offering to read only a portion of it, if the whole was objected to. The defendant in error objected to the reading of any part of it. The objection was sustained, and the plaintiff took its second exception, p. 88, 89.

After the evidence was concluded, the defendant in error offered five prayers, and the plaintiff seven. The Court granted the defendant's 5th and the plaintiff's 5th, refused all the others on both sides, and gave an instruction of its own. This action of the Court was the ground of the plaintiff's 3rd and 4th exceptions, pages 102 to 107, inclusive.

POINTS.

The defendant in error will contend that:

1st. The Court properly permitted the calculations and adjustments of Mr. Clark to go to the jury, as it did, only for the purpose of aiding them in making necessary calculations, which no jury can make without some such aid.

2d. The letter of May 21st, 1873, p. 88, being part of a negotiation for a compromise, was properly excluded. No *part* of such negotiation is admissible. It is impossible to understand to what particular portion of the letter the counsel for the plaintiff in error offered to confine their reading. The sentence in relation to preliminary proof is, by itself, incomplete and unintelligible. It would read "that the Home Insurance Company will not interpose the objection of want of preliminary proof, or any

other technical defense to any suit which may be brought therefor." P. 89. That is either a promise or an assertion, neither one of which the writer was competent or undertook to make. In its proper connection, it means that the writer would do a particular thing on the condition contained in the sentence. By itself, it has a meaning different from that in which it was used. It is evident that the want of preliminary proof had been, for the first time, suggested but a few days before. P. 88. Whether a formidable point or not, it was one which, when suggested, the Warehouse Co. naturally desired to remove. Its President therefore predicated his willingness to accept a proposition of compromise made by the plaintiff in error as to part of the claim, on the condition that there should be a waiver of the right, if any existed, to make this technical defence, as to the balance. The part of the letter referred to therefore, if intelligible by itself, which it is not, was as obnoxious as any other part of it to the principle which renders inadmissible in evidence every proposition made as part of a negotiation for a compromise. The letter contains no admission that the right to require preliminary proof had not been waived—no admission of any other fact.

1 Greenleaf on Evidence, sect. 192.

McNiel vs. Holbrook, 12 Peters, 87, 88.

3d. The Court below would have been justifiable in granting the 4th prayer of defendant in error, which asserted that the policy of the plaintiff covered all the property in the warehouse at the time of the fire—not simply the interest of the defendant therein—and that it ought to contribute with the specific policies to the payment of all the losses on said property. Such was the decision of the Court of Appeals in the case against the People's Insurance Company, (pp. 68, 69.) The agreements between the parties extending, until the decision on this point should be made, the time within which suit might be brought on the policy of the plaintiff in error, were equivalent to agreements

The record on page 38 having been read subject to exceptions & no prayer for its exclusion having been afterwards offered, the admissibility of it is not open for discussion here - Coates vs Sangston 5 Md. 131.

to abide by that decision. They, at all events, gave the parties to this cause an interest in the question involved in that cause—made them parties to it—in the sense necessary to bind them by the result of it.

Lovejoy vs. Murray, 3 Wal., 18, 19.
Robbins vs. Chicago, 4 Wal., 672.
Chicago vs. Robbins, 2 Black., 418.
Cecil vs. Cecil, 19 Md., 79.
Mackenzie vs. R. R. Co., 28 Md., 174.
1 Greenleaf's Ev., sects. 522–3.

4th. That decision was right, on principle and authority. The written part of the policy, describing the kind of property insured and the interest therein intended to be covered, controlled the printed part and neutralized every printed condition inconsistent with the writing. "On merchandize, hazardous or extra-hazardous, their own, or held by them in trust, or in which they have an interest or liability" covered property held in trust, notwithstanding the 4th condition that property so held must be so declared to the company—otherwise the written words "or held by them in trust" would have no meaning. It covered goods held on storage, notwithstanding the 4th condition that goods so held "must be separately and specifically insured"—otherwise the written words or "in which they have an interest or liability" would have no meaning. The Warehouse Co. was prohibited by its charter from owning or dealing in "merchandize." Its business was to hold it "on storage." It could not hold it otherwise. It could only have in it an interest or liability. The object of the policy was to cover merchandize so held, to the extent of the Company's interest or liability, for its own purposes, and in trust for the benefit of its customers, beyond the

amount of its own interest or liability. See opinion of Court of Appeals, p. 68 of the Record, and the same case,

Hough, &c. vs. Peoples' Insurance Co., 36 Md., 399, 431–2.
Waters vs. Monarch Ins. Co. (5 E. & B.) 85 E. C. & R., 868.
London & North Western R. R. Co. vs. Glyn, (1 E. & E.) 102 E. C. & R., 652.
Stillwell vs. Staples, 19 N. Y., 401.
Siter vs. Morrs, 13 Penna., 218.
Ætna Ins. Co. vs. Jackson, 16 B. Monroe, 242, 254, &c.
Deforest vs. Fulton F. Ins. Co., 1 Hall, 84.
Story on Agency, Sect. 111.
Flanders on Insurance, pages 77 to 82 inclusive, and 309 to 313, inclusive, of 1st edition, 83 to 92, inclusive, and 341, of 2d edition.

5th. But the Court below accorded to the defendant in error much more restricted rights. It made the policy cover only property on which the defendant in error had advanced, and only to the extent of its advances—less the contributory liability of other policies on the same property payable to the defendant in error, whether the latter were insurances of its own or its consignor's interest. See p. 16 of Record. If there be any error in this instruction it consists in giving the plaintiff in error a deduction, to which it was not entitled, on account of policies which were on an interest different from that of the defendant in error, and which ought not therefore to contribute to the relief of the plaintiff in error. This is an error of which the defeudant only can complain.

6th. The plaintiff in error's 1st prayer embraces the proposition that if other companies had insured the interest of Hough, Clendenning & Company, in any of the property in question, the plaintiff in error was not bound by its insurance of the interest of the Warchouse Company in the same property. The latter

submits that it is clear law, needing no authority to sustain it, that the general owner of property, and one having a lien on it, may each insure his own interest, for his own benefit. The liability of the plaintiff in error to contribute to losses on the interest of Hough, Clendenning & Co. covered by other policies, was not involved in this case. The converse of it, the liability of Hough, Clendenning & Co's policies to contribute to the loss on property covered by the policy of the plaintiff in error may have been. If the 1st prayer of the latter was right in principle as to the contributory liability of these policies in respect to each other, the defendant in error was entitled to recover the whole of its loss covered by the plaintiff's policy, without any deduction on account of the contributory liability of any other policies. But the Court did not concede to it this much. It allowed the plaintiff in error a deduction for the contributory liabilities of all the policies issued to Hough, Clendenning & Co., and made payable to the Warehouse Company. It is submitted, therefore, that the Court was right in rejecting the 1st prayer of plaintiff in error, and that its error, if it committed one, was in allowing to the latter a deduction to which it was not entitled, of which the defendant in error alone can complain.

7th. The Acts of Assembly incorporating the Warehouse Co. gave it a lien for its advances.

Pages 27 and 30 of Record.

8th. This was an insurable interest, and would have been covered by the policy, even without the words heretofore quoted, showing a special intention to cover it.

Insurance Company vs. Baring, 20 Wal., 159–62.

Franklin Ins. Co. vs. Coates, 14 Md., 285.

9th. The denial by the plaintiff in error of its liability for any thing except the twenty-five bales of cotton, not covered by spe-

cific policies, for which it settled; the modification of its customary form of receipt, so as to leave open the claim now made; the agreements extending the period within which suit might be brought, until points on which the parties to this cause differed could be judicially settled in other cases; the admission by the appellant, after the decision of one of those questions, that its liability was established thereby; the interviews of Coale with various persons, after that time, showing that the amount of liability and the principle on which contribution should be made were the only questions left open for dispute—the action of Coale as one of the committee on behalf of the underwriters, his report, p. 59, his calculations as to the amount for which the appellant was liable, all showing that he had all the information preliminary proof could have given him, and all the other facts and circumstances of the case—justified the Court in leaving to the jury the question whether there was or was not a waiver of the right to object to the want of preliminary proof, and justified the jury in finding that there was.

Tayloe vs. Merchants' Fire Ins. Co., 9 How., 403.
May on Ins., sec. 469, &c.
Flanders on Ins., p. 541, 5 and 6, and 520, of 1st ed. and and 593 of 2d edition.
Martin vs. Fishing Ins. Co., 20 Pick., 396.
Franklin Fire Ins. Co. vs. Coates, 14 Md., 285.
2 Philips on Ins., sects. 1803 and 1813.
Clarke vs. New England Ins. Co., 6 Cush., 345.
Franklin Fire Ins. Co. vs. Chicago Ice Co., 36 Md., 102.

10th. This was a proper question for the jury.

Franklin Fire Ins. Co. vs. Updegraff, 7 Wright, 43 Penn' 350-59.
Coursin vs. Penn. Ins. Co., 10 Wright, (46 Penn.,) 323, 330.
Flanders on Ins., 532, (532 of 2d ed.)

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11th. The Act of Assembly made it a condition of the Plaintiff in Error's doing business in Maryland, that its agent should have authority to settle cases, without the interference of the parent office. P. 90.

Coale, its agent, had this authority, and as an incident thereto the right to waive what might otherwise be necessary to perfect a claim.

Franklin Fire Ins. Co. vs. Chicago Ice Co., 36 Md., 102.

For these reasons the Court properly refused the plaintiff in error's 3d, 4th and 6th prayers, granted the 5th of defendant in error, and left to the jury the question whether there had or had not been a waiver of the right to require preliminary proof.

12th. The policies of the Atlantic and Peabody Insurance Companies did not profess to be on any specific "110 bales of cotton." Parol evidence was admissible to show the particular "110 bales of cotton" intended to be covered by each, and consequently to show that both covered the same.

2 Taylor's Evidence, pp. 1035–6, sects. 1082–3.
Bradley vs. Alex. & Georgetown S. B. Co., 13 Peters, 89.
Noonan vs. Lee, 2 Black., 499, 504.

13th. The question whether 109 bales of cotton were covered by other policies or not, was properly submitted to the jury, and the plaintiff was allowed to recover for them only in the event of the jury's finding that they were not covered by specific policies.

14th. The theory of the 2d prayer of plaintiff in error is that the Atlantic and Peabody companies having each issued a policy on 110 bales of cotton, the defendant in error believed and was justified in believing that they covered together 220 bales; that

* The rule which limits the admissibility of parol evidence to avoid purposes is only applicable as between the parties to the contract. As between the parties to this cause, who were strangers to contracts, the policies in question, the Court could have been proven by parol even if it had contradicted these policies. Barnard vs. Sieber, 21 Howe 14 & 169.

they were as to the defendant in error, liable on that number, and as between the parties to this cause bound to contribute to the loss thereof, although the two policies did not profess to insure separate lots, and it may have been, and in fact was understood between the parties to them that they covered together only one lot of 110. It will be contended by the defendant in error, that this theory is unsound, even if there were testimony on which to predicate it—that the parties here have nothing to do with the question, whether other companies had justified the defendant in error in believing that they covered more property than they really did or not; that such a mistake, if made by the defendant in error, could not affect its claim against the plaintiff in error; and that the testimony of the latter shows that the former had not, in fact, been misled into any such error. The extract from the books of defendant in error, offered in evidence by the plaintiff, shows that the former always knew that those two companies covered the same lot of 110 bales—not separate lots, each, of that number. They were entered on the latter's books as covering 55 bales each, that is to say, 110 together, not, as assumed in the prayer, 220. See page 91, of Record.

For these reasons, the 2d prayer of plaintiff in error was properly rejected.

15th. All that was correct in the principle of the plaintiff in error's 14th prayer, was embraced in the Court's instructions. The jury were required to find, as a condition precedent to allowing anything on 109 bales of cotton, that they were uncovered by specific policies, and that the defendant in error had made advances on them, which were unpaid at the time of the fire. In the event of their so finding, they were authorized to allow the defendant in error "two-thirds of all loss or damage to said 109 bales, to the extent of its advances as aforesaid."

"Loss or damage to said 109 bales," of course involves the exclusion of any part of them which may have been saved, the

deduction of any salvage which may have been received by the defendant in error. It will be contended that the prayer was also erroneous in claiming a deduction of any thing which might be due on special policies, payable to the defendant in error, on other property; that the defendant in error was only bound to credit, as against its advances, what it had actually received, not what it might be entitled to from other sources, and might never receive.

The question raised by this prayer was not as to the contributory liability of other companies for loss on the 109 bales to which it refers. The hypothesis of the prayer concedes that they were not covered by any other policy than that of the plaintiff in error. It claims that the general advances of defendant in error are to be taken into account, and that they are liable to a deduction, not only for what it may have received, but for what it may or may not be entitled even to claim, and for what it may, at all events, never receive.

S. T. WALLIS,
JOHN H. THOMAS,
Att'ys for Deft. in Error.

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